PART I
CODE OF ORDINANCES

Chapter 1
GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters shall constitute and be designated the "Mound, Minnesota City Code" and may be so cited. Such ordinances may also be cited as the "Mound City Code."

(Code 1987, § 100.20, subd. 1)

State law reference—Codification of ordinances, Minn. Stats. § 415.021.

Sec. 1-2. Definitions and rules of construction.

The following definitions and rules of construction shall apply to this Code and to all ordinances and resolutions unless the context requires otherwise or unless a different definition is provided:

Generally. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the City Council may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

City. The term "city" means the City of Mound, Minnesota. Whenever the term "city" is used in this Code with respect to approvals, permission, administration, or similar matters, the term shall be deemed to mean the City Manager or designee of the City Manager.

City Council, Council. The term "City Council" or "Council" means the Council of the City of Mound, Minnesota.

Code. The term "Code" means the Mound, Minnesota City Code, as designated in section 1-1.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows, except that when appropriate from the context, the terms "and" and "or" are interchangeable:

(1) "And" indicates that all the connected terms, conditions, provisions or events apply.

(2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

County. The term "county" means Hennepin County, Minnesota.

Delegation of authority. A provision that authorizes or requires a city officer or city employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

Following. The term "following" means next after.

Gender. Words of one gender include all other genders.

Includes. The term "includes" does not limit a term to a specified example.

Joint authority. Words giving a joint authority to three or more persons give such authority to a majority of such persons.

LMCD. The abbreviation "LMCD" means the Lake Minnetonka Conservation District.

May. The term "may" is to be construed as being permissive and not mandatory.

May not. The term "may not" states a prohibition.

Minn. Stats. The abbreviation "Minn. Stats." mean the Minnesota Statutes, as now or hereafter amended or renumbered.

Month. The term "month" means a calendar month.

Must. The term "must" shall be construed as being mandatory.

Number. Words in the singular include the plural. Words in the plural include the singular.

Oath. A solemn affirmation is the equivalent to an oath and a person shall be deemed to have sworn if such person makes such an affirmation.

Officers, departments, etc. References to officers, departments, boards, commissions or employees are to city officers, city departments, city boards, city commissions and city employees.

Ordinary high water level (OHWL). The term "ordinary high water level (OHWL)" means as defined in section 129-2.

Owner. The term "owner," as applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property.

Person. The term "person" means any human being, any governmental or political subdivision or public agency, any public or private corporation, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity.

Personal property. The term "personal property" means any property other than real property.

Preceding. The term "preceding" means next before.

Premises. The term "premises," as applied to real property, includes lands and structures.

Property. The term "property" includes real property, personal property and mixed property.

Real property, real estate, land, lands. The terms "real property," "real estate," and "land" include lands, buildings, tenements and hereditaments and all rights and interests therein except chattel interests.

Shall. The term "shall" is to be construed as being mandatory.

State. The term "state" means the State of Minnesota.

Street. The term "street" means any alley, avenue, boulevard, highway, road, lane, viaduct, bridge and the approach thereto, and any other public thoroughfare in the city. The term "street" also means the entire width thereof between abutting property lines. The term "street" includes a sidewalk or footpath.

Tenant, occupant. The term "tenant" or "occupant," as applied to a building or land, includes:

(1) Any person holding either alone or with others a written or oral lease of such building or land.

(2) Any person who either alone or with others occupies such building or land.

Tenses. The present tense includes the past and future tenses. The future tense includes the present tense.

Will. The term "will" is to be construed as being mandatory and not permissive.

Writing. The term "writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is authorized or required, it shall be made in writing in the English language.

Year. The term "year" means a calendar year.

(Code 1987, §§ 100.20, subd. 1, 100.40)

Sec. 1-3. Headings of sections; history notes; references.

(a) The headings and titles of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, nor of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the heading, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate legislative history. Editor's notes and state law references and other footnotes that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(c) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.

(Code 1987, §§ 100.25, 100.30)

State law reference—Similar provisions, Minn. Stats. § 645.49.

Sec. 1-4. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any repealed ordinance.

(b) Unless stated specifically in the ordinance, the repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

(Code 1987, § 100.50)

State law reference—Similar provisions, Minn. Stats. §§ 645.35, 645.36.

Sec. 1-5. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

(1) Arrange the material into appropriate organizational units.

(2) Supply appropriate headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.

(3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.

(4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

(5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or insert section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code.

(6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code, including correction of obvious errors in spelling, punctuation or wording.

(Code 1987, § 100.20, subd. 2)

Sec. 1-6. General penalty; continuing violations.

(a) In this section the term "violation of this Code" means any of the following:

(1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor or a petty misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.

(3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor or a petty misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(4) Violation of or failure to comply with any resolution adopted in conformity with this Code or an ordinance.

(5) Counseling, aiding or abetting a violation of this Code as defined above.

(b) In this section the term "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a violation of this Code shall be a misdemeanor and punishable by a fine of not more than $1,000.00, imprisonment for a term not exceeding 90 days, or any combination thereof; provided, however, that if the violation is declared to be a petty misdemeanor the penalty shall be a fine not exceeding $300.00.

(d) Except as otherwise provided by law or ordinance:

(1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.

(2) With respect to violations that are not continuous with respect to time, each act is a separate offense.

(e) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

(f) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief.

(Code 1987, § 100.60)

State law reference—Authorized penalty for ordinance violations, Minn. Stats. §§ 410.33, 412.231, 609.0332, 609.034.

Sec. 1-7. Severability.

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that if any section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall

not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code, for the Council declares that it is its intent that it would have enacted this Code and all provisions adopted by reference in this Code without such invalid or unconstitutional provisions. If any provision of this Code is declared to be inapplicable to specific property by a valid judgment of a court of competent jurisdiction, such judgment shall not restrict the applicability of such provision to other property.

(Code 1987, § 100.65)

Sec. 1-8. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the city relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as new enactments.

Sec. 1-9. Code does not affect prior offenses or rights.

Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of the ordinance adopting this Code. Nothing in this Code or the ordinance adopting this Code creates or eliminates any preexisting nonconforming uses.

(Code 1987, § 100.50)

Sec. 1-10. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code affects the validity of the actions listed below. Such ordinances continue in full force and effect to the same extent as if published at length in this Code.

(1) Annexing property into the city.

(2) Deannexing property or excluding property from the city.

(3) Providing for salaries or other employee benefits not codified in this Code.

(4) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.

(5) Authorizing or approving any contract, deed, or agreement.

(6) Making or approving any appropriation or budget.

(7) Fixing or establishing any fee or charge.

(8) Granting any right or franchise.

(9) Vacating any easement or park land.

(10) Adopting or amending the comprehensive plan.

(11) Levying or imposing any special assessment.

(12) Creating a special district.

(13) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street.

(14) Establishing the grade of any street or sidewalk.

(15) Dedicating, accepting or vacating any plat or subdivision.

(16) Levying, imposing or otherwise relating to taxes not codified in this Code.

(17) Establishing traffic regulations for specific locations not codified in this Code.

(18) Rezoning specific property.

(19) That is temporary, although general in effect.

(20) That is special, although permanent in effect.

(21) The purpose of which has been accomplished.

Chapter 2

ADMINISTRATION*

***State law reference—**Municipalities generally, Minn. Stats. ch. 412.

ARTICLE I. IN GENERAL

Sec. 2-1. Abandoned property.

(a) *Procedure.* All property other than abandoned vehicles lawfully coming into the possession of the city shall be disposed of as provided in this section.

(b) *Storage.* The department of the city acquiring possession of the property shall arrange for its storage. If city facilities for storage are unavailable or inadequate, the department may arrange for storage at privately owned facilities.

(c) *Claim by owner.* The owner may claim the property by exhibiting satisfactory proof of ownership and paying the city any storage or maintenance costs incurred by it. A receipt for the property shall be obtained upon release to the owner.

(d) *Sale.* If the property remains unclaimed in the possession of the city for 60 days, the property shall be sold to the highest bidder at a public auction conducted by the Chief of Police of the city after two weeks, published notice setting forth the time and place of the sale and the property to be sold.

(e) *Disposition of proceeds.* The proceeds of the sale shall be placed in the general fund of the city. If the former owner makes application and furnishes satisfactory proof of ownership within six months of the sale, he shall be paid the proceeds of the sale of his property less the costs of storage and the proportionate part of the cost of published notice and other costs of the sale.

(Code 1987, § 170.05)

State law reference—Authority to so provide, Minn. Stats. § 471.195; abandoned motor vehicles, Minn. Stats. ch. 169B.

Secs. 2-2—2-20. Reserved.

ARTICLE II. CITY COUNCIL*

***State law reference—**City Council generally, Minn. Stats. § 412.191 et seq.

DIVISION 1. GENERALLY

Sec. 2-21. Salaries of Mayor and Councilmembers.

Effective January 2, 1995, the salary of the Mayor shall be $375.00 per month and the salary of each Councilmember shall be $250.00 per month.

(Code 1987, § 155.35; Ord. No. 70-1994, 8-29-1994)

Sec. 2-22. Worker's compensation.

Pursuant to Minn. Stats. § 170.011, subd. 9(6), the elected officials of the city and municipal officers appointed for a regular term of office shall be included in the city's coverage for workers' compensation under the Minnesota Workers' Compensation Act (Minn. Stats. ch. 176).

(Code 1987, § 155.40; Ord. No. 22-1989, 2-20-1989)

Sec. 2-23. Hearings.

(a) *Generally.* Unless otherwise provided in this Code, or by law, every public hearing required by law, ordinance or resolution to be held on any legislative or administrative matter shall be conducted in accordance with this section.

(b) *Notice.* Every hearing shall be preceded by ten days' mailed notice to all persons entitled thereto by law, ordinance or regulation unless only published notice is required. The notice shall state the time, place, and purpose of the hearing. Failure to give the notice or defects in it shall not invalidate the proceedings if a good faith effort has been made to comply with this subsection.

(c) *Conduct of hearing.* At the hearing, each party in interest shall have the opportunity to be heard and to present such evidence as is relevant to the proceeding. The Council may adopt rules governing the conduct of hearings, records to be made, and such other matters as it deems necessary.

(d) *Record.* Upon the disposition of any matter after hearing, the Council shall have prepared a written summary of its findings and decisions and enter the summary in the official Council minutes.

(Code 1987, § 100.55)

Secs. 2-24—2-49. Reserved.

DIVISION 2. RULES OF ORDER AND PROCEDURE

Sec. 2-50. Suspension or amendment of rules.

These rules may be suspended only by a two-thirds vote of the members present and voting.

(Code 1987, § 155.30)

Sec. 2-51. Council meetings.

(a) *Regular meetings.* Unless the Council determines otherwise, regular meetings of the Council shall be held on the second and fourth Tuesdays of each calendar month at 7:00 p.m. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. All meetings, including special and adjourned meetings, shall be held in the city hall.

(b) *Special meetings.* During a regular Council meeting, the City Council may set the date for special meetings, or the Mayor or any two members of the Council may call a special meeting of the Council upon at least 24 hours' notice to each member of the Council.

(c) *Annual meeting.* At the first regular Council meeting in January of each year, the Council shall:

(1) Designate the depositories of city funds;

(2) Designate the official newspaper;

(3) Choose one of the Councilmembers as acting Mayor, who shall perform the duties of the Mayor during the disability or absence of the Mayor from the city or, in case of a vacancy in the office of Mayor, until a successor has been appointed and qualifies;

(4) Appoint such officers and employees and such members of boards, commissions, and committees as may be necessary;

(5) Take such other action as deemed appropriate.

(Code 1987, § 155.01) (Ord. 02-2010, 6-6-10)

State law reference—Designation of depositories, Minn. Stats. § 427.02; designation of official newspaper, Minn. Stats. § 412.831; designation of acting Mayor, Minn. Stats. § 412.121.

Sec. 2-52. Presiding officer.

(a) *Who presides.* The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the acting Mayor shall preside. In the absence of both, the clerk shall call the meeting to order and shall preside until the Councilmembers present at the meeting choose one of their number to act temporarily as presiding officer.

(b) *Procedure.* The presiding officer shall preserve order, enforce the rules of procedure herein prescribed, and determine without debate, subject to final decision of the Council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the Council shall be conducted in accordance with Robert's Rules of Order.

(c) *Appeal procedure.* Any member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain his ruling, but no other Councilmember shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present exclusive of the presiding officer.

(d) *Rights of presiding officer.* The presiding officer may make motions, second motions, or speak on any question except that on demand of any Councilmember he shall vacate the chair and designate a Councilmember to preside temporarily.

(Code 1987, § 155.05)

State law reference—Mayor to preside, Minn. Stats. § 412.101.

Sec. 2-53. Approval of minutes.

The minutes of each meeting shall be reduced to typewritten form, and copies thereof shall be delivered to each Councilmember as soon as practicable after the meeting. At the next regular Council meeting following such delivery, approval of the minutes shall be considered by the Council. The minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the Council. If there is an objection, the Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

(Code 1987, § 155.10)

State law reference—Clerk to keep minutes of meetings, Minn. Stats. § 412.151, subd. 1.

Sec. 2-54. Meeting agenda.

The clerk shall prepare an agenda of business for each regular Council meeting and file a copy in his office not later than one business day before the meeting. Copies thereof shall be available to each Councilmember and to the official newspaper of the city as far in advance of the meeting as time for preparation will permit. No item of business shall be considered unless it appears on the agenda for the meeting or is approved for addition to the agenda by a unanimous vote of the Councilmembers present.

(Code 1987, § 155.15; Ord. No. 16-2005, 9-25-2005)

Sec. 2-55. Quorum and voting.

(a) *Quorum.* At all Council meetings a majority of all the Councilmembers elected

shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.

(b) *Voting.* The votes of the members on any questions may be taken in any manner which signifies the intention of the individual members, and the votes of the members on any action taken shall be recorded in the minutes. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. If any member is present but does not vote, the minutes, as to his name, shall be marked "present/not voting."

(c) *Votes required.* A majority vote of all members of the Council shall be necessary for approval of any ordinance unless a larger number is required by statute. Except as otherwise provided by statute, a majority vote of a quorum shall prevail in all other cases.

(Code 1987, § 155.20)

State law reference—Quorum and required votes, Minn. Stats. § 412.191, subds. 1, 4.

Sec. 2-56. Ordinances, resolutions, motions, petitions and communications.

(a) *Readings.* Every ordinance and resolution shall be presented in writing. An ordinance or resolution need not be read in full unless a member of the Council requests such a reading.

(b) *Signatures and proof of publication required.* Every ordinance and resolution passed by the Council shall be signed by the Mayor, attested by the clerk, and filed by him in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

(c) *Repeals and amendments.* Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

(d) *Motions, petitions, communications.* Every motion shall be stated in full before it is submitted to a vote by the presiding officer and shall be recorded in the minutes. Every petition or other communication addressed to the Council shall be in writing and shall be read in full upon presentation to the Council unless the Council dispenses with the reading. Each petition or other communication shall be recorded in the minutes by title and filed with the minutes in the office of the clerk.

(Code 1987, § 155.25)

Secs. 2-57—2-85. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

***State law reference—**City officers and employees generally, Minn. Stats. § 412.111 et seq.; municipal officers and employees, Minn. Stats. ch. 418; vacancies, resignations and removals from public office, Minn. Stats. ch. 351.

Sec. 2-86. City Manager; form of government.

The city operates under the optional Plan B form of government provided for in Minn. Stats. §§ 412.601—412.751.

(Code 1987, § 205.01; Ord. No. 07-2001, 9-23-2001)

Sec. 2-87. Chief administrative officer; duties.

(a) *Chief administrative officer.* The City Manager is the chief administrative officer of the city, and is responsible to the Council for the supervision of all departments and divisions of city administration except where otherwise provided by law. The Manager shall prepare and distribute to the department and division heads, such rules and regulations as deemed necessary for the orderly and efficient conduct of city administrative affairs. The City Manager shall periodically review the administrative structure of the city and may recommend to the Council changes in the administrative organization of the city.

(b) *Specific duties.* The Manager has the responsibilities provided in the laws governing statutory cities. The Manager may employ an administrative assistant and such other employees, including an administrative intern, as are necessary for the execution of the duties of the office. The Manager is designated as the data practices compliance official.

(Code 1987, § 205.01; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

State law reference—Similar provisions, Minn. Stats. § 412.611 et seq.

Sec. 2-88. Defense and indemnification of officers and employees of the city.

(a) *Purpose.* In recent years there has been a loss of sovereign immunity for municipal functions and employees and a trend has developed wherein municipalities, their officers, employees and agents have been joined in litigation and a number of these lawsuits have been filed naming, officers, employees and agents individually in lawsuits. As a result of this trend in the law, it becomes more difficult to obtain the services of citizens who are reluctant to volunteer for service in municipal government and to assume individual liability when acting in behalf of the city. City Councilmembers, employees and officers are in the normal course of events, participants in many controversial decisions which result in litigation and subject the individuals to concern regarding personal liability. It is the purpose of this section to unequivocally state that the city will protect its city officials, elected or appointed, including members of boards, commissions and committees appointed by the City Council in performing their duties to promote the public health, safety and general welfare. Public officials must be in a position to make decisions when they are needed and to act to implement decisions of the City Council. Action on controversial subjects and implementing policy decisions can and will result in errors on the part of an employee or an elected or appointed official, and it is determined that it is better that said officials act and risk some error and possible injury from such actions rather than not to act at all. The public health, safety and general welfare will be promoted and preserved by providing assurances to these individuals that they will be supported by the municipality in carrying out their official duties.

(b) *Defense and indemnification.* Subject to the limitations in Minn. Stats. § 466.04, the city shall defend, save harmless and indemnify any of its officers and employees, whether elected or appointed, and specifically including members of its advisory commissions, against any tort, claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of their duty. This responsibility to defend and indemnify does not apply in cases of malfeasance in office or willful or wanton neglect of duty.

(c) *Defense counsel.* The City Council will designate the City Attorney or legal counsel representing an insurance carrier for the city to defend the city's employees and officers against all such lawsuits wherein the employee or officer is individually named as a defendant. The city shall continue to represent the employee or officer if the decision is appealed to a higher court, or the City Council may authorize the appeal of any decision against the officer or employee to a higher court.

(d) *Right to personal counsel.* The provisions of this section shall not supersede or

preclude the officer's or employee's right to retain at his own expense his personal legal counsel to provide for this defense. The determination as to whether to use the city's legal counsel, for which the city shall be responsible for defense costs, or whether the officer or employee chooses to use his own individual counsel at his own expense, shall be at his option, and if the official selects his own attorney, this shall relieve the city from all present and future obligations as they relate to any defense or indemnification of the officer or employee for the alleged tort, claim or demand.

(Code 1987, § 206.05; Ord. No. 3, 5-11-1987)

State law reference—City required to indemnify its officers and employees, Minn. Stats. § 466.07.

Sec. 2-89. City Attorney.

The City Council will designate a City Attorney to serve as the legal adviser to the Counsel and the City Manager. The City Attorney shall represent the city in legal proceedings to which the City is a party and shall perform such other functions of a legal nature as the Council may direct.

(Ord. No. 11-2012, 12-23-12)

Secs. 2-90—2-119. Reserved.

ARTICLE IV. DEPARTMENTS

Sec. 2-120. Departmental and divisional organization.

(a) *Administrative service.* The administrative service of the city is divided into the following departments and heads thereof:

(1) Community Development Department, Community Development Director/Planner.

(2) Finance and Administration Department, Finance Director/Clerk/Treasurer.

(3) Fire Department, Fire Chief/Emergency Management Director.

(4) Liquor Operations Department, Liquor Store Manager.

(5) Public Works Department, Public Works Director.

(b) *Divisions within departments.* Divisions within departments shall be established from time to time by resolution of the City Council with the recommendation of the Manager.

(Code 1987, § 205.05; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12, Ord. No. 07-2014, 8-24-14)

Sec. 2-121. General duties of department and division heads.

(a) *Administrative.* Department and division heads are the administrative officers of the city. They are responsible for the efficient administration of their respective departments and divisions and shall initiate, with the approval of the City Manager, whatever practices, programs and procedures are necessary to fulfill that responsibility.

(b) *Assignment of duties.* The City Manager may assign the same individual to head two or more departments or to head one or more divisions within a department. The Manager may be a department head. The Manager shall create a job description for each department head position, describing the specific duties and areas of responsibility for the position. The Manager may modify any department head's job description and duties from time to time. A department head shall perform the duties identified in the job description and any additional duties assigned

by the Manager.

(Code 1987, § 205.10; Ord. No. 07-2001, 9-23-2001)

Sec. 2-122. Deleted.

(Code 1987, § 205.15; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

Sec. 2-123. Public Works Department.

The Public Works Director is responsible to the Manager for the organization, planning, administration and coordination of public works of the city. The director shall perform the duties described in the job description for that position and any additional duties assigned by the City Manager.

(Code 1987, § 205.20; Ord. No. 07-2001, 9-23-2001)

Sec. 2-124. Liquor Operations Department.

The Liquor Store Manager is responsible to the City Manager for the operation of the municipal liquor store. The Liquor Store Manager shall perform the duties described in the job description for that position and any additional duties assigned by the City Manager.

(Code 1987, § 205.25; Ord. No. 07-2001, 9-23-2001)

Sec. 2-125. Police Department.

The administration of the Police Department shall be determined by the City Council upon the recommendation of the City Manager. Any reference to the Police Chief in the City Code shall hereinafter refer to the designee of the City Manager.

(Code 1987, § 205.30; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

Sec. 2-126. Fire Department.

The Fire Chief is responsible to the City Manager for all activities relating to the operation of the Fire Department. The Fire Chief shall be the Director of Emergency Management. The Fire Chief shall perform the duties described in the job description for that position, the duties described in the job description for the Director of Emergency Management, and any additional duties assigned by the City Manager. The Fire Department is supervised by the Fire Chief. There may be one or more assistant chiefs in the department.

(Code 1987, § 205.35; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

Sec. 2-127. Deleted.

(Code 1987, § 205.40; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

Sec. 2-128. Community Development Department.

The Community Development Director/Planner is responsible to the Manager for the organization, planning, administration, and coordination of the community development functions of the city. The director shall perform the duties described in the job description for that position and as described in section 129-31 and any additional duties assigned by the Manager.

(Code 1987, § 205.45; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12)

Sec. 2-129. Finance and Administration Department.

The Finance Director/Clerk/Treasurer is responsible to the City Manager for the organization, planning, administration, and coordination of the finance activities of the city. The Finance Director shall perform the duties described in the job description for that position, the duties of treasurer, the duties of the City Clerk, and any additional duties assigned by the City Manager.

The Finance Director/Clerk/Treasurer is designated as the responsible authority for the collection, use, and dissemination of the City's data.

(Code 1987, § 205.55; Ord. No. 07-2001, 9-23-2001; Ord. No. 11-2012, 12-23-12, Ord. No. 07-2014, 8-24-14)

Secs. 2-130—2-156. Reserved.

ARTICLE V. FINANCE*

***State law reference—**Municipal finance generally, Minn. Stats. chs. 426—435.

Sec. 2-157. Fees.

Whenever is this Code it is provided that fees are as established by the city or there is other language of similar import, shall language shall mean the fees are as established by ordinance, resolution or any other meaning authorized by law. Nothing in this section prevents the Council from lawfully delegating to a city officer, city employee or city department the power to establish fees.

Sec. 2-158. Recovery of expense of work chargeable to another.

Where any work is done by the municipality or its employees which this Code provides shall be done at the expense of any person, the expense of such work may be recovered by an action at law against any person so charged, before any court of competent jurisdiction; and the recovery in such case shall also include all the expenses attendant upon the suit for collecting the same, including a reasonable attorney's fee.

(Code 1987, § 100.75)

Sec. 2-159. Insurance.

Notwithstanding any provisions of this Code to the contrary, whenever in this Code an applicant for a license, permit or approval is required to furnish the city proof of liability insurance, such a requirement shall be construed to include a requirement that the city be an additional insured in such insurance policy.

Secs. 2-160—2-186. Reserved.

ARTICLE VI. CODE ENFORCEMENT

Sec. 2-187. Administrative offenses.

(a) *Certain offenses enforced as administrative.* The City Council has determined to enforce certain offense within the city as administrative offenses. Those violations shall not include violations described in Minnesota Statutes, Chapter 169. The offenses to be enforced as Administrative Offenses shall be determined by resolution of the City Council as recommended by the Fire Chief and Community Development Director.

(b) *Violation/penalty.* Any person violating one of the administrative offenses within the city shall be subject to the scheduled administrative penalty. The City Council shall determine the administrative penalties and both the administrative offenses and the penalty amount may be amended, from time to time, by resolution of the City Council.

(c) *Enforcement.* Any member of the Police Department or any other person employed by the city with authority to enforce this Code my issue administrative violations under this section. Notice shall be given to the violator setting forth the nature of the offense, the date, time of the violation, the name of the official issuing the citation and the amount of the scheduled

penalty.

(d) *Payment.* Once notice of an administrative violation is given, the person responsible for the violation shall, within seven calendar days of issuance of notice, pay the stated violation penalty to the city.

(e) *Failure to pay.* If a violator fails to pay the penalty imposed by this section, or if the violator wishes to contest the citation, then the matter shall be processed as a code or criminal offense through the county district court system.

(f) *Disposition of penalties.* All penalties collected shall be paid over to the city and deposited in the general fund.

(Ord. No. 13-2007, §§ 1200.05—1200.30, 11-27-2007; 04-2009, 8-23-09; Ord. No. 11-2012, 12-23-12)

Secs. 2-188—2-212. Reserved.

ARTICLE VII. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Sec. 2-213. Residency Requirements.

To be qualified to serve as a member of the commissions described in articles VIII, IV, and X, the individual must be a resident of the City of Mound. A member must resign his or her seat on a commission by the end of the calendar year in which his or her residency status changes.

(Ord. No. 07-2015, 11-22-15)

Secs. 2-214—2-267. Reserved.

DIVISION 2. ECONOMIC DEVELOPMENT COMMISSION*

***State law reference—**Economic development, Minn. Stats. ch. 469.

Sec. 2-268. Commission deactivated.

The economic development commission for the city, the "EDC," established on February 21, 1989, has been deactivated, effective June 12, 2001, subject to reactivation by resolution of the Council. Any such resolution reactivating the EDC shall also make the member appointments.

(Code 1987, § 260.01; Ord. No. 05-2001, 7-22-2001)

Secs. 2-269—2-290. Reserved.

ARTICLE VIII. PLANNING COMMISSION*

***State law reference—**Planning Commission, Minn. Stats. § 462.354, subd. 1.

Sec. 2-291. Established; powers.

A city Planning Commission is hereby established. The Planning Commission shall have the powers set forth Minn. Stats. ch. 462, and as authorized in this article.

(Code 1987, § 245.01)

Sec. 2-292. Composition.

(a) *Members; ex officio member.* The Planning Commission shall consist of nine members. Eight members shall be appointed by the City Council and may be removed by a four-fifths vote of the Council. The Council shall also select an ex officio member of the commission from among its own members, the said Councilmember to be appointed for one year, commencing in January of each year.

(b) *Appointment; term; vacancy; oath; compensation.* Except for the ex officio member, members shall be appointed for terms of three years and until their successors are appointed and qualified. The term of the ex officio member shall not extend beyond the member's office tenure. Vacancies during the term shall be filled by the Council for the unexpired portion of the term. Every appointed member before entering upon the discharge of his duties shall take an oath that he will faithfully discharge the duties of his office. All members shall serve without compensation.

(Code 1987, § 245.05)

Sec. 2-293. Organization, meetings, etc.

(a) The commission shall elect a chairperson and a secretary from among its appointed members for a term of one year; and the commission may create and fill such other offices as it may determine.

(b) The commission shall hold at least one regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, and findings, which record shall be a public record.

(Code 1987, § 245.10)

Sec. 2-294. Preparation of comprehensive municipal plan.

It shall be the function and duty of the Planning Commission to update and revise the comprehensive municipal plan for the physical development of the city, including proposed public buildings, street arrangements and improvements, public utility services, parks, playgrounds, and other similar developments, the use of property, the density of population, and other matters relating to the physical development of the city. Such plan may be prepared in sections, each of which shall relate to a major subject of the plan, as outlined in the commission's program of work and Minn. Stats. ch. 462.

(Code 1987, § 245.20)

Sec. 2-295. Capital improvement program.

Each officer, department, board or commission of or in the city whose functions include recommending, preparing plans for, or constructing public works shall, before the end of each year, submit a list of the proposed public works recommended by such officer, department, board or commission for planning, initiation, or construction during the ensuing year. The Planning Commission shall request from the local school district a similar list of its proposed public works. The Planning Commission shall list and classify all such proposed public works for the ensuing year and shall recommend them to the City Council.

(Code 1987, § 245.45)

ARTICLE IX. PARKS AND OPEN SPACE COMMISSION

Sec. 2-300. Establishment.

The Parks and Open Space Commission for the City of Mound is hereby re-established.

Sec. 2-301. Composition.

The Parks and Open Space Commission shall consist of five members. Four members shall be appointed by the city Council and may be removed by a four-fifths vote of the Council. The Council shall select one member of the Council to serve on the Commission from among the councilmembers, the said councilmember to be appointed for one year, commencing in January of each year.

Members shall be appointed for terms of three years. Appointees shall hold their offices until their successors are appointed and qualified. Vacancies during the term shall be filled by the council for the un-expired portion of the term. Every appointed member before entering upon the discharge of his or her duties shall take an oath that he or she will faithfully discharge the duties of his or her office. All members shall serve without compensation but may be reimbursed for actual expenses if funds therefore are provided in the adopted budget of the Parks Department.

Sec. 2-302. Organization, meetings, etc.

The Commission shall elect a Chairperson from among its appointed members for a term of one year with a limit of two consecutive terms as Chairperson; and the Commission may create and fill such other offices as it may determine.

The Commission may hold at least one regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, and findings, which record shall be a public record.

Sec. 2-303. Duties.

It shall be the duty of the Commission to meet from time to time with the City Manager, the City Council, and the Parks Superintendent to consider matters pertaining to recreation programs, parks and open space (except shoreline that is subject to City licensed docks) in the City as shall be referred to the Commission by the City Council, City Manager, the Parks Superintendent, or as member of the Commission deem proper regarding such matters.

The public policy of the City of Mound is to strive to:

(a) provide present and future residents of the City an unpolluted environment

(b) provide access to lakes and streams in the community; and

(c) provide parks which afford natural beauty as well as recreational enjoyment

It is understood that the Commission is advisory to the City Council and is created pursuant to the authority conferred upon the City Council by Minnesota Statutes.

Sec. 2-304. Reports to be advisory.

The Commission reports, conclusions and recommendations shall be made to the City Council, City Manager and Parks Superintendent as may be requested or to any or all of them as the Commission deems appropriate in light of the matter under consideration. Its reports, conclusions and recommendations are purely advisory, and the final determination and responsibility shall be with the Council. it shall be aided and assisted in every way possible by the Parks Superintendent, who shall be appointed by the City Manager.

(Code 1987, §255; 01-2009, 1/25/09; Ord. No. 02-2014, 2-9-14)

Sec. 2-305 - 2-319 Reserved.

ARTICLE X. DOCKS AND COMMONS COMMISSION

Sec. 2-320. Establishment.

The Docks and Commons commission for the City of Mound is hereby established.

Sec. 2-321. Composition.

The Docks and Commons Commission shall consist of six members. Five members (to be composed of three inland and two abutting property owners, all of whom must be active in the City licensed dock program) shall be appointed by the City Council and may be removed by a four-fifths vote; the Council shall select one member of the Council to serve on the Commission from among the Councilmembers, the said Councilmember to be appointed for one year, commencing in January of each year. In the event no active dock program participants, either abutting or inland property owners, apply for a vacancy, a resident on the official wait list can be appointed to serve on the Commission.

On the terms of the members first appointed, one shall expire December 31, 2009; two shall expire December 31, 2010; and two shall expire December 31, 2011. Their successors shall be appointed for terms of three years. Both the original and successive appointees shall hold their offices until their successors are appointed and qualified. An appointee shall remain active in the City licensed dock program or on the official wait list or must resign his or her seat on the Commission by the end of the calendar year in which his or her status changes. Every appointed member before entering upon the discharge of his or her duties shall take an oath that he or she will faithfully discharge the duties of his or her office. All members shall serve without compensation but may be reimbursed for actual expenses if funds therefore are provided in the adopted budget of the department.

(Ord. No. 07-2015, 11-22-2015)

Sec. 2-322. Organization, meetings, etc,

The Commission shall elect a Chairperson from among its appointed members for a term of one year with a limit of two consecutive terms as Chairperson; and the Commission may create and fill such other offices as it may determine.

The Commission may hold at least one regular meeting a month. It shall adopt rules for the transaction of business and shall keep record of its resolutions, transactions and findings, which record shall be public record.

Sec. 2-323. Duties.

It shall be the duty of the Commission to meet from time to time with the City Manager, the City Council and the Parks Superintendent to consider matters pertaining to docks and shoreline that is subject to City licensed docks in the City as shall be referred to the Commission by the City Council, City Manager, Parks Superintendent, or as members of the Commission deem proper with respect to such matters.

The policy of the City of Mound is to strive to:

(a) provide present and future residents of the City an unpolluted environment

(b) provide access to lakes and streams in the community; and

(c) provide parks which afford natural beauty as well as recreational enjoyment

It is understood that the Commission is advisory to the City Council and is created pursuant to the authority conferred upon the City Council by Minnesota Statutes.

Sec. 2-324. Reports to be advisory.

The Commission reports, conclusions and recommendations shall be made to the Council, Manager and Parks Superintendent as may be requested, or to any or all of them as the Commission deems appropriate in the light of the matter under consideration. Its reports, conclusions and recommendations are purely advisory, and the final determination and responsibility shall be with the Council. It shall be aided and assisted in every way possible by the Parks Superintendent, who shall be appointed by the City Manager.

(Code1987, §256; 02-2009, 1/25/09)

Chapter 6

ALCOHOLIC BEVERAGES*

***State law reference;** Minn. Stat. Ch. 340A as it may be amended from time to time.

ARTICLE I. IN GENERAL

Secs. 6-1—6-17. Reserved.

ARTICLE II. INTOXICATING LIQUOR

DIVISION 1. GENERALLY

Sec. 6-18. Definitions.

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

LIQUOR. As used in this Chapter, "liquor" without modification by the word "intoxicating" or "3.2 percent malt" includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where table service is provided. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by Minn. Stat. § 157.16, as it may be amended from time to time, and shall meet the requirements of the definition of a Class III restaurant as defined in City Code Section 129-2. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this Chapter.

(Ord. No. 11-2016; 9-4-2016)

DIVISION 2. RESTRICTIONS

Sec. 6-19. Nudity on the Premises of Licensed Establishments Prohibited.

(a) The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this Chapter. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Chapter, as set forth in this section, reflects the prevailing community standards of the city.

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

(c) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Chapter or the imposition of a civil penalty under the provisions of Section 6-45(b).

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-20. Consumption in Public Places.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-21. Reserved

DIVISION 3. LICENSES

Sec. 6-22. Number of Licenses which may be issued.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-23. Term and Expiration of Licenses.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-24. Types of Liquor Licenses.

The Council of a city which has a municipal liquor store is authorized to issue only those licenses specified in Section 6-24.

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

(b) *3.2 percent malt liquor off-sale license*. May be issued to permit the sale of 3.2 percent malt liquor at retail establishments, in the original package, for consumption off the premises only. Off-sale of 3.2 percent malt liquor shall be limited to the legal hours for off-sale as defined by Minn. Stat. § 340A.504.

(c) *Temporary 3.2 percent malt liquor licenses*, which may be issued only to a club, charitable, religious, or nonprofit organization for no more than 12 days per year.

(d) *On-sale intoxicating liquor licenses*, which may be issued to the following establishments as defined by Minn. Stat. § 340A.101, as it may be amended from time to time, and this Chapter: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and theaters. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 6-25 of this Chapter shall not exceed the amounts provided for in Minn. Stat. § 340A.408, subd. 2(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of Minn. Stat. § 340A.404, subd. 4(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference,

meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of Minn. Stat. § 340A.404, subd. 4(a) as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(e) *Sunday on-sale intoxicating liquor licenses*, may be granted only after authorization to do so by voter approval at a general or special election as provided by Minn. Stat. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in Section 6-18 of this Chapter, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of Section 6-25 of this Chapter, shall not exceed $200, or the maximum amount provided by Minn. Stat. § 340A.504, subd. 3(c) as it may be amended from time to time.

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

(g) *On-sale wine licenses*, with the approval of the Commissioner of Public Safety to restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of Minn. Stat. § 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in section 6-18 and to licensed bed and breakfast facilities which meet the criteria in Minn. Stat. § 340A.401, subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of Section 6-25 of this Chapter, shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor over 3.2 percent (strong beer) without an additional license.

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

(i) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of Section 6-25 of this Chapter shall not exceed $300, or the maximum amount permitted by Minn. Stat. § 340A.414, subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

(j) *Brew pub on-sale intoxicating liquor or on-sale 3.2 percent malt liquor licenses*, with the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at Minn. Stat. § 340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year. If a brew pub licensed under this section possesses a license for off-sale under Section 24(k) of this Chapter, the brew pub's total combined retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

(k) *Brewer off-sale intoxicating liquor licenses*, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Section 6-24(j) of this Chapter or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established at Minn. Stat. § 340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. All malt liquor sold under this license shall be packaged in the manner required by Minn. Stat. § 340A.301, subd. 7 as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year, and Sunday sales are limited to growlers only.

(l) *Brewer temporary on-sale intoxicating liquor licenses* may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than 3,500 barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

(m) *Brewer taproom on-sale intoxicating liquor license.* May be issued to a brewer who owns no more than one brewery or winery and holds a brewer's license from the state and manufactures no more than 20,000 barrels of malt liquor annually or a winery that produces no more than 250,000 gallons of wine annually for consumption on the premises or adjacent to the brewery location owned by the brewer. All malt liquor sold under this license shall be packaged in the manner required by Minn. Stat. § 340A.301, subd. 7 as it may be amended from time to time.

(n) *Brewer taproom off-sale intoxicating liquor license*, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Section 6-24(m) of this Chapter or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established at Minn. Stat. § 340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. All malt liquor sold under this license shall be packaged in the manner required by Minn. Stat. § 340A.301, subd. 7 as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year, and Sunday sales are limited to growlers only.

(o) *Micro-distillery Cocktail Room license.* May be issued to a distillery operated within the state producing premium, distilled spirits in total quantity not to exceed 40,000 proof gallons in a calendar year. A micro-distillery, as permitted in state statute may provide on its premises samples of distilled spirits manufactured on its premises, in an amount not to exceed 15 milliliters per variety per person. No more than 45 milliliters may be sampled under this paragraph by any person on any day. A micro-distillery can sell cocktails to the public as permitted in Minn. Stat. § 340A.22 as it may be amended from time to time.

(p) *Micro-distillery off-sale license.* May be issued to a distillery producing distilled spirits as permitted in Minn. Stat. § 340A.22 as it may be amended from time to time. This license allows the sale of one 375 milliliter bottle per customer per day of the product manufactured on-site as per the hours for retail off-sale licensees in the licensing municipality and only for brands available for distribution by wholesalers.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-25. License Fees; Pro Rata.

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

(b) The Council may establish from time to time by ordinance, resolution or any other meaning authorized by law, the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this Chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(c) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated with any unexpired fraction of a month being counted as one month.

(d) All license fees shall be paid in full at the time the application is filed with the city. In renewing the license, the Council may allow the "On-Sale" licensee to pay the fee in two installments, with one-half due on or before June 30 and the balance due on or before December 31. If the application is denied, the license fee shall be returned to the applicant.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-26. Council Discretion to Grant or Deny a License.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-27. Application for License.

(A) *Form.* Every application for a license issued under this Chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that location or another location, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this Chapter. The form shall be verified and filed with the city. No person shall make a false statement in an application.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-28. Description of Premises.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-29. Applications for Renewal.

At least 60 days before a license issued under this Chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-30. Transfer of License.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-31. Investigation.

(a) *Preliminary background and financial investigation.* On an initial application for a license or an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of each applicant or it may contract with the Commissioner of Public Safety for the investigation. Each applicant shall pay with the application an investigation fee which shall be in addition to any license fee.

(b) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be $500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and $10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the $10,000 out of state investigation fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied.

(c) *Referral to Chief of Police for recommendation.* All applications for a license shall be referred to the Chief of Police and to such other city departments as the City Manager shall deem necessary, for verification and investigation of the facts set forth in the application. The Chief of Police shall cause to be made such investigation of the information requested in section 6-27 as shall be necessary and shall make a written recommendation and report to the Council which shall include a list of violations of federal or state law or municipal regulations.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-32. Hearing and Issuance.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-33. Restrictions on Issuance.

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

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

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-34. Conditions of License.

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

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

(b) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(c) Compliance with financial responsibility with regard to liability requirements of state law and of this Chapter is a continuing condition of any license.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-35. Hours and Days of Sale.

(a) The hours of operation and days of sale shall be those set by Minn. Stat. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows. The City does not further restrict on-sale or off-sale hours or limit off-sale hours to those of the municipal liquor store than the hours set by Minn. Stat. § 340A.504, as it may be amended from time to time.

(b) Conditions of sales after 1:00 am shall be set by Minn. Stat. § 340A.504 Subd. 7, as it may be amended from time to time, with municipal consent.

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

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

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

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-36. Employment of Minors.

No person under 18 years of age may serve or sell intoxicating liquor in a retail intoxicating liquor establishment under the provisions of Minn. Stat. § 340A.412, Subd. 10, as it may be amended from time to time.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-37. Restrictions on Purchases and Consumption.

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

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-38. Suspension and Revocation.

(a) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this Chapter relating to liquor. Except in cases of lapse of proof of financial responsibility with regard to liability, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, Minn. Stat. § 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

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

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

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

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

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

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

d. For a fourth violation within any three-year period, the license shall be revoked within 60 days following a violation for which revocation is imposed.

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

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

(d) The provisions of Sec. 6-45 pertaining to administrative penalties may be imposed in addition to or in lieu of any suspension or revocation under this Section.

(Ord. No. 11-2016; 9-4-2016)

DIVISION 4. MUNICIPAL LIQUOR STORES

Sec. 6-39. Existing Municipal Liquor Stores.

The city has in existence on the effective date of this Chapter a municipal liquor store for the sale of intoxicating liquor. Except as provided in Section 6-43, no intoxicating liquor may be sold at retail elsewhere in the city.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-40. Location.

The municipal liquor store shall be located at a suitable place in the city as the Council determines by motion. However, no premises upon which taxes, assessments, or other public charges are delinquent shall be leased for municipal liquor store purposes. The Council shall have the right to establish additional off-sale and on-sale stores at other locations as it may, from time to time, by motion, determine.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-41. Operation.

(a) *Manager.* The municipal liquor store shall be in the immediate charge of a Liquor Store Manager selected by the City Manager and paid compensation as is fixed by the City Council. The Liquor Store Manager shall not be a person who would be prohibited by law or any provision of this Chapter from being eligible for an intoxicating liquor license. The Liquor Store Manager shall operate the municipal liquor store under the City Manager's direction and shall perform those duties in connection with the store as may be established by the City Manager. The Liquor Store Manager shall be responsible to the City Manager for the conduct of the store in full compliance with this Chapter and with the laws relating to the sale of intoxicating liquor and 3.2 percent malt liquor.

(b) *Other employees.* The City Manager may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Liquor Store Manager, shall hold their positions at the pleasure of the City Manager. No person under the age of 21 shall be employed in the store.

(c) *Municipal liquor store fund.* All of the revenues received from the operation of a municipal liquor store shall be deposited in a municipal liquor store fund from which all ordinary operating expenses, including compensation of the Liquor Store Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the general fund of the city or to any other appropriate fund of the city by resolution of the Council, and may be expended for any municipal purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.

(d) *Financial statement.* The Council shall provide within 90 days following the end of the calendar year for publication a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor store for that year. The balance sheet and statement shall be published in accordance with the provisions of Minn. Stat. § 471.6985, as it may be amended from time to time.

(e) *Hours of operation.* The hours during which the sale of intoxicating liquor may be sold shall be within the provisions of Minn. Stat. § 340A.504. No person, other than the Liquor Store Manager or a store employee, may remain in the municipal liquor store longer than one-half hour after the time when the sale of intoxicating liquor must cease.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-42. Proof of Financial Responsibility.

The City shall demonstrate proof of financial responsibility with regard to liability required by licensees of retail intoxicating liquor establishments under the provisions of Minn. Stat. § 340A.409, as it may be amended from time to time.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-43. Issuance of Other Licenses.

(a) *On-sale licenses for the sale of intoxicating liquor and wine.* The Council may issue in its sound discretion on-sale licenses, as limited by the provisions of this Chapter and the provisions of Minn. Stat. § 340A.404, as it may be amended from time to time.

(b) *On- and off-sale 3.2 percent malt liquor licenses.* The Council may issue in its sound discretion on- and off-sale 3.2 percent malt liquor licenses, as limited by the provisions of this Chapter and the provisions of Minn. Stat. § 340A.403, as it may be amended from time to time.

(c) *On- and off-sale brew pub, taproom and micro-distillery licenses.* The Council may issue in its sound discretion on- and off-sale brew pub, taproom and micro-distillery licenses, as limited by the provisions of this Chapter and the provisions of Minn. Stat. § 340A.22 to 340A.28, as it may be amended from time to time.

(Ord. No. 11-2016; 9-4-2016)

Sec. 6-44. Reserved.

DIVISION 5. PENALTIES

Sec. 6-45. Penalties.

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

(b) The Council shall impose a civil penalty of up to $2,000 for each violation of Minn. Stat. Ch. 340A, as it may be amended from time to time, and of this Chapter. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, Minn. Stat. § 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:

(1) For the first violation within any three-year period, $500.

(2) For the second violation within any three-year period, $1,000.

(3) For the third and subsequent violations within any three-year period, $2,000.

(c) The term "violation" as used in Section 6-38 includes any and all violations of the provisions in this section, or of Minn. Stat. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period.

(d) The provisions of Section 6-38 pertaining to suspension or revocation may be imposed in addition to or in lieu of any administrative penalties under this Section.

(Ord. No. 11-2016; 9-4-2016)

Chapter 10

AMUSEMENTS*

***State law reference—**General authority relative to amusements, Minn. Stats. § 412.221, subd. 25.

ARTICLE I. IN GENERAL

Secs. 10-1—10-18. Reserved.

ARTICLE II. AMUSEMENT DEVICES

DIVISION 1. GENERALLY

Sec. 10-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement device means any mechanical or electrical device designed to be played by contestants and upon which contestants receive a score or a rating based on the performance of any machine which upon the insertion of a coin, token, or slug operates or may be operated by the public generally for entertainment or amusement, which emits music or noise, or which displays motion pictures.

(Code 1987, § 410.01)

Sec. 10-20. Hours of operation.

No person receiving such license shall allow such machine to be operated so as to emit noise or loud sounds between the hours of 12:00 midnight and 10:00 a.m.

(Code 1987, § 410.15)

Sec. 10-21. Violation of article provisions.

Any person who violates the provisions of this article shall be guilty of a misdemeanor, and any license issued to any such person pursuant to this article shall be forthwith revoked.

(Code 1987, § 410.25)

Secs. 10-22—10-35. Reserved.

DIVISION 2. LICENSE

Sec. 10-36. Required.

No person shall operate, maintain, or keep for operation within the city any such amusement device as hereinbefore defined upon any premises owned, leased, operated, and controlled by such person without having applied for and received a license as hereinafter provided, which license shall be posted in a conspicuous place on or near the amusement device.

(Code 1987, § 410.05)

Sec. 10-37. Application; transferability.

Each person desiring to maintain, keep, or operate such a mechanical device upon such premises shall make application at the office of the City Clerk upon forms provided by the city for such license. Each such application shall be accompanied by an annual license fee as

established by the city. If the Council approves such application, the clerk shall issue the license, which shall be displayed upon the machine or in a prominent place. The license shall be transferable from one machine to another if operated upon the same premises. The license shall describe the premises where such machine is operated and shall not be transferable to any other premises.

(Code 1987, § 410.10; Ord. No. 01-2001, 2-25-2001)

Sec. 10-38. Term.

Each license shall expire on the April 30 after issuance. The entire annual license fee shall be paid for one year or for any part thereof.

(Code 1987, § 410.20

Secs. 10-39—10-55. Reserved.

ARTICLE III. SHOWS, CONCERTS, CARNIVALS AND CAROUSELS

DIVISION 1. GENERALLY

Secs. 10-56—10-70. Reserved.

DIVISION 2. LICENSE

Sec. 10-71. License Required.

(a) Circus or Carnival. No person shall give or maintain any circus or carnival, whether admission be charged or not, without securing a license therefore. Provided, no license shall be necessary for any entertainment given by amateurs, or in which the performers do not receive any pay, or which is given for the benefit of any school, church, or benevolent institution or for any charitable purpose. Any license required by this article shall be in addition to, and not in lieu of, any license which may be required for any musical concert.

(b) Musical Concert. No person shall give or maintain a musical concert, whether admission be charged or not, without securing a license therefore. Between the hours of 10:00 p.m. and 7:00 a.m. it is unlawful to maintain a musical concert from which noise or music or other sound emanates in sufficient volume such as to unreasonably disturb the peace, quiet, or repose of persons residing in a residential area. The city council may, in its discretion, approve a request for extended hours for an event(s). The term “musical concert” includes, but is not limited to, live music, music provided by a disc jockey, and/or any type of amplified music.

(Code 1987, § 482.01; Ord. No. 09-2014, 11-16-2014)

Sec. 10-72. Application.

Application for such license shall be made to the clerk and shall state the nature of the entertainment, the time, and the place thereof.

(Code 1987, § 482.05)

Sec. 10-73. Issuance; fees.

The Council shall authorize the issuance of such license if the activity to be license will not violate any law. The clerk shall thereupon issue such license on payment of the proper fee according to a fee as established by the city.

(Code 1987, § 482.10; Ord. No. 01-2001, 2-25-2001)

Chapter 14

ANIMALS*

***State law reference—**General authority to regulate animals, Minn. Stats. § 412.221, subd. 21; animal health, Minn. Stats. ch. 35; cruelty to animals, Minn. Stats. ch. 343; stray animals, Minn. Stats. ch. 346.

ARTICLE I. IN GENERAL

Sec. 14-1. Impounding.

(a) *Who impounds; provision of proper sustenance.* The poundkeeper, any police officer, or any animal warden may take up and impound in the city pound any animal or fowl found running at large in violation of this Code and shall provide proper sustenance for every animal impounded.

(b) *Notice.* Within 24 hours after any animal has been impounded, the poundkeeper shall make a reasonable attempt to give oral or written notice to the owner where known.

(c) *Release.* No animal impounded shall be released except to a person displaying a receipt from the clerk showing payment of the impounding fees or the sale price, or payment of the same to the poundkeeper.

(d) *Fees.* Any dog/cat or other animal may be redeemed from the pound by the owner upon paying the following fees and charges:

(1) The boarding fee in the amount established by the city to be paid to the poundkeeper for services (all animals).

(2) An impounding fee as established by the city.

(3) If it is the second or third time within a one-year period, the impounding fee shall be as established by the city. An amount as established by the city shall be added for each additional time a dog is impounded within a year. The impounding fee shall continue to compound until the animal is free from impounding for a 12-month period.

(e) *Treatment during impounding.* Any animal which is impounded in the pound shall be kept with kind treatment and comfort. If the animal is not known or suspected of being diseased and has not bitten a person, it shall be kept in the pound for at least five regular business days, unless it is sooner reclaimed by its owner. If such animal is known to be or is suspected of being diseased with a disease which might be transmitted to persons, it shall be kept in the pound for at least ten days.

(f) *Disposition of unclaimed animals.* Any animal which is not redeemed within five days of impoundment may be sold for not less than the amount provided in subsection (d) of this section to any one desiring to purchase the animal if it is not required by a licensed educational or scientific institution under Minn. Stats. § 35.71. All sums received in addition to the fees fixed by subsection (d) of this section shall be paid to the owner if he makes a claim within one year of the sale and furnishes satisfactory proof of ownership. Any animal which is not claimed by the owner or sold shall be painlessly killed and buried by the poundkeeper.

(g) *Poundkeeper; duties.* The city animal warden shall be poundkeeper. The City Council may provide for an animal pound either within or outside the city limits. The poundkeeper shall maintain the city pound and perform other duties imposed on him by this Code. The poundkeeper upon receiving any animal shall make a complete registry, entering the

breed, color and sex of such animal. The poundkeeper shall account for any and pay over monthly to the treasury all monies received by him on behalf of the city as fees or other charges. The poundkeeper shall also make an accurate written report each month to the city, all fees or other charges collected, all dogs, cats, and other animals impounded, the duration of such impoundment, all animals destroyed, and any other pertinent data relating to animal control which may be required by the manager.

(h) *Illegal release.* No unauthorized person shall break into the pound or release any animal legally placed therein.

(Code 1987, § 456.80; Ord. No. 12-1988, 7-26-1988; Ord. No. 52-1991, 12-23-1991; Ord. No. 03-2001, 4-8-2001; Ord. No. 10-2015, 01-01-2016)

Sec. 14-2. General prohibition.

No person shall keep any animal in the city or permit such animal to be kept on premises owned, occupied, or controlled by him except under the conditions prescribed by this Code.

(Code 1987, § 456.01; Ord. No. 1-2015, 02-22-2015)

Sec. 14-3. Treatment.

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

(Code 1987, § 456.05)

State law reference—Cruelty to animals, Minn. Stats. ch. 343.

Sec. 14-4. Animals at large.

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

1) The animal is on a leash,
2) The animal is on a leash no more than six feet in length,
3) The animal is at heel beside a competent person having custody of it,
4) The animal is under a competent person’s custody when in a vehicle being driven or parked on the street,
5) The animal is securely restrained in a vehicle being driven or parked on the street; or
6) The animal is on the property of another with the consent of the property owner.

(Code 1987, § 456.10; Ord. No. 1-2015; 02-22-2015)

Sec. 14-5. Confinement of fierce animals.

Every owner shall confine within a building or secure enclosure any fierce, or vicious animal except when muzzled and in the control of a competent person. Minnesota Statutes Sections 347.50 to 347.565 shall apply to the keeping of any dangerous or potentially dangerous dog.

(Code 1987, § 456.15; Ord. No. 01-2015; 02-22-2015)

Sec. 14-6. Diseased animals.

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

(Code 1987, § 456.20)

Sec. 14-7. Manner of keeping.

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

(Code 1987, § 456.25)

Sec. 14-8. Leashing and feces cleanup.

(a) No person having the control of any dog/cat or other domestic animal, or animal described in section 14-4 shall permit the same to be on any unfenced area or lot abutting upon a street, public park, public place or upon any other private land without being effectively restrained from moving beyond such unfenced area or lot; nor shall any person having the custody or control of any such animal permit the same at any time to be on any street, public park, school ground or public place without being effectively restrained by chain or leash not exceeding six feet in length.

(b) Any person having the custody or control of any dog/cat or domestic animal or animal described in section 14-4 shall have the responsibility for cleaning up any feces of the animal and disposing of such feces in a sanitary manner. It shall furthermore be the duty of any person having custody or control of any such animal on or about any public place to have in such person's possession suitable equipment for the picking up, removal, and sanitary disposal of animal feces. For the purposes of this section, the term "public place" shall include any property open for public use or travel such as privately owned parking lots for shopping centers or other areas where the public is invited or allowed on private property.

(c) The provisions of this section shall not apply to the ownership or use of Seeing-Eye dogs by blind persons or dogs used in police activities in this city, such as the Canine Corps or tracking dogs used by or with the permission of the city's Police Department.

(Code 1987, § 456.26; Ord. No. 52-1991, 12-23-1991; Ord. No. 03-2001, 4-8-2001)

Sec. 14-9. Keeping of animals within city limits.

(a) Persons may keep, maintain, or harbor within the city an animal that is usually and customarily considered a pet such as a dog, cat, ferret, bird, rabbit, rodent (i.e. mice, rat, gerbil, hamster, chinchilla, or guinea pig), fish, non-poisonous spider, non-poisonous reptile (i.e. snake, lizard, or turtle), amphibian (i.e. salamander, toad, or frog), or insect (i.e. butterfly or grasshopper). Birds shall not include farm poultry as identified in Subsection 14-9 (b) 2.

(b) No person shall keep, maintain, or harbor within the city any of the following animals:
    1. Any animal or species prohibited by local, Minnesota, or federal law;
    2. Any of the various species of farm animals or farm poultry, such as, but not limited to, horses, cattle, mules, donkeys, goats, sheep, llamas, alpacas, potbellied pigs, pigs, bees, chickens, roosters, ducks, geese, turkeys, peacocks, pigeons, swans, and doves; or
    3. Any wild animal, including those born or raised in captivity. This includes, but is not limited to, the following:
        i. All large cats, whether full grown or not;
        ii. All members of the family Canidae except domesticated dogs;
        iii. All crossbreeds except those between domesticated animals;

iv. Skunks, whether captured in the wild, domestically raised, descented or not descented, vaccinated against rabies or not vaccinated against rabies;
v. All poisonous snakes;
vi. All raccoons;
vii. All carnivorous fish;
viii. All apes and monkeys; and
ix. Alligators and crocodiles.

(c) For any animal not specifically listed in this Section 14-9, the Community Development Director shall determine whether an animal shall be permitted. Appeals will be addressed as identified in Sec. 129-32.

(d) The display or exhibition of any prohibited animal, whether gratuitously or for a fee, shall only be allowed by zoological parks, performing animal exhibitions, circuses, schools or colleges, or veterinary clinics which are property licensed by all applicable government entities.

(e) The pound keeper, any police officer, or any animal warden shall be empowered to immediately impound any prohibited animal found within the city, and to seek whatever legal process is necessary to enter private property to carry out this directive. It is not a defense to allege that the animal has been tamed, born in captivity, and/or raised in captivity.

(f) In the event city personnel are required to assist in the capture of a prohibited animal that escapes or is allowed to run at large, the City shall charge the owner for all costs incurred and collect unpaid costs as permitted by law or ordinance.

(Code 1987, § 456.30; Ord. No. 03-2001, 4-8-2001; Ord. No. 01-2015, 02-22-2015)

Sec. 14-10. Location of stables and barns.

No stables or barns in which sheep, goats, pigs, or swine are kept may be located within 50 feet of a place of human habitation. No live horse, cow, sheep, goat, pig, or chicken shall be kept in any shelter which forms a part of or adjoins any place of human habitation, and no such shelter shall be closer than 150 feet to any premises used for school, religious, or hospital purposes or to any establishment where food and lodging are served or furnished to the public.

(Code 1987, § 456.35)

Sec. 14-11. Care of premises as animal shelters.

(a) *Clean shelters.* Every structure and yard in which animals or fowl are kept shall be maintained in a clean and sanitary condition and free of all rodents, vermin, and objectionable odors. The interior walls, ceilings, floors, partitions, and appurtenances of any such structure shall be white-washed or painted as the health officer shall direct. Upon the complaint of an individual or otherwise, the health officer shall inspect such structure or yard and issue any such order as may be reasonably necessary to carry out the provisions of this Code.

(b) *Manure.* Manure shall be removed with sufficient frequency to avoid nuisance from odors or from the breeding of flies, at least one per month from October 1 to May 1 each year and once every two weeks at other times. Unless used for fertilizer, manure shall be removed by hauling beyond the city limits. If used as fertilizer, manure shall be spread upon the ground evenly and turned under at once or as soon as the frost leaves the ground.

(Code 1987, § 456.40)

Sec. 14-12. Entry onto private property for enforcement.

To enforce this Code, the animal warden, police officer, community service officer, or other officers designated by the Police Chief may enter upon private property where there is reasonable cause to believe that there is a dog/cat or other animal on the premises which is not being kept, confined, or restrained as required by this Code.

(Code 1987, § 456.45; Ord. No. 03-2001, 4-8-2001; Ord. No. 10-2015, 01-01-2016)

Sec. 14-13. Quarantine.

Any animal that bites a person and punctures the skin shall be quarantined for a period of not less than ten days in the city designated kennel, veterinary hospital, or on the owner's premises, as determined by the Chief of Police or person designated by the Chief of Police. City personnel may refuse to permit confinement on the owner's premises if the animal has a repeated history of running at large, or does not have currently effective rabies inoculation. If confinement on the owner's premises is permitted, the animal shall not be allowed off the owner's premises or in contact with other people or animals during the confinement period, except for medical purposes. The owner is responsible for contacting the Police Department after ten days and notifying the department of the condition of the animal and allowing city personnel to inspect the animal. If the owner fails to comply with these restrictions, authorized personnel may enter onto the property, seize the animal, and remove it to the city designated kennel. The owner shall be responsible for all costs of confinement under this section.

(Code 1987, § 456.50; Ord. No. 86-1997, 3-15-1997, Ord. No. 10-2015, 01-01-2016)

Sec. 14-14. Proceedings for destruction of certain animals.

(a) Upon sworn complaint to a court that any one of the following facts exist:

(1) That any animal at any time has destroyed property or habitually trespasses in a damaging manner on the property of persons other than the owner;

(2) That any animal at any time has attacked or bitten a person outside the owner's or custodian's premises;

(3) That any animal is vicious or shows vicious habits or molests pedestrians or interferes with vehicles on the public streets; or

(4) That any animal is a public nuisance.

(b) The judge shall issue a summons directed to the owner of the animal commanding him to appear before the court to show cause why the animal should not be seized by any police officer, or otherwise disposed of in the manner authorized in this Code. Such summons shall be returnable not less than two nor more than six days from the date thereof and shall be served at least two days before the time of the scheduled appearance. Upon such hearing and finding the facts true as complained of, the court may either order the animal killed or order the owner or custodian to remove it from the city, or may order the owner or custodian to keep it confined to a designated place. If the owner or custodian violates such order, any police officer may impound the animal described in such order. The provisions of this section are in addition to and supplemental to other provisions of this Code. Costs of the proceedings specified by this section shall be assessed against the owner or custodian of the animal if the facts in the complaint are found to be true; or to the complainant if the facts are found to be untrue.

(Code 1987, § 456.55)

Sec. 14-15. Vicious animals; summary destruction.

If an animal is diseased, vicious, dangerous, rabid, or exposed to rabies and such animal cannot be impounded after a reasonable effort, or cannot be impounded without serious risk to the persons attempting it, such animal may be immediately killed by or under the direction of the animal warden or a police officer.

(Code 1987, § 456.60)

Sec. 14-16. Abandonment.

It is unlawful for any person to abandon any dog or other animal in this city.

(Code 1987, § 456.65

Secs. 14-17—14-35. Reserved.

ARTICLE II. DOGS AND CATS*

***State law reference—**Dogs and cats, Minn. Stats. ch. 347.

Sec. 14-36. Impounding.

Any dog/cat found running at large contrary to the provisions of this Code may be impounded as provided in section 14-1.

(Code 1987, § 455.30; Ord. No. 03-2001, 4-8-2001; Ord. No. 10-2015, 01-01-2016)

Sec. 14-37. Running at large prohibited.

No dog or cat shall be permitted to run at large within the limits of the city. Any dog/cat is deemed to be at large when it is off the premises owned or rented by the owner or his agent and not under restraint. A dog/cat is under restraint if it is controlled by a leash not exceeding six feet in length, or at heel beside a competent person having custody of it, and obedient to that person's commands, or within a vehicle being driven or parked on a street or within the property limits of the owner's premises. An unattended dog/cat on the property of another without the consent of such property owner is at large and not under restraint even though it is on a leash.

(Code 1987, § 455.01)

Sec. 14-38. Reserved.

(Ord. No. 10-2015, 01-01-2015)

Sec. 14-39. Dog/cat nuisances.

The owner or custodian of any dog/cat shall prevent the dog/cat from committing in the city any act which constitutes a nuisance. It is a nuisance for any dog to habitually or frequently bark or cry, cat to habitually or frequently cry or howl, to frequent school grounds, parks, or public beaches, to chase vehicles, to molest or annoy any reasonable person away from the property of his owner or custodian, or to damage, defile, or destroy public or private property. Failure of the owner or custodian of a dog/cat to prevent the dog/cat from committing such a nuisance is a violation of this Code. Violation of section 14-8 relating to leashing and feces clean up shall also be considered a nuisance.

(Code 1987, § 455.10; Ord. No. 52-1991, 12-23-1991)

Sec. 14-40. Confinement of certain dogs/cats.

Every female dog/cat in heat shall be confined in a building or other secure enclosure in such manner that it cannot come into contact with another dog/cat, except for planned breeding.

(Code 1987, § 455.15)

Sec. 14-41. Quarantine of certain dogs/cats.

Any dog/cat which bites a person shall be quarantined as provided in section 14-13.

(Code 1987, § 455.20)

Sec. 14-42. Muzzling proclamation.

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

(Code 1987, § 455.25)

Sec. 14-43. Limits of dogs/cats on one premises.

Not more than three dogs/cats over six months of age shall be kept on any one premises except at a premises duly licensed pursuant to section 14-44.

(Code 1987, § 456.70)

Sec. 14-44. Commercial kennels.

(a) *Licenses and fees.* No person shall operate a commercial kennel in this city without first obtaining a kennel license. Application for such license shall be made to the clerk. The clerk shall refer the application to the Council, which may grant or deny the license. The annual license fee for a commercial kennel shall be as established in accordance by the city, due on or before May 1 of each year. Licenses may be only granted in commercial, business, or industrially zoning districts.

(b) *Revocation of license.* Any commercial kennel license may be revoked by the Council by reason of any violation of this Code or by reason of the violation of any other health or nuisance ordinance, order, law or regulation. Before revoking a commercial kennel license, the licensee shall be given notice of the meeting at which such revocation will be considered, and if the licensee is present at such meeting, he shall first be given an opportunity to be heard. Notice of such meeting shall be given to the licensee in writing. Such written notice shall be mailed to the address of the licensee as set forth in the licensee's application for the commercial kennel license, and it shall be mailed at least five days before the date of the meeting at which such revocation is to be considered by the Council.

(c) *Commercial kennel regulations.* Commercial kennels shall be kept in a clean and healthful condition at all times, and shall be open to inspection by any health officer, sanitarian, animal control officer, or other person charged with the enforcement of this Code, or any health or sanitary regulation of this city at all reasonable times.

(Code 1987, § 456.75; Ord. No. 01-2001, 2-25-2001)

ARTICLE III. WILD ANIMALS*

***State law reference—**General authority to regulate animals, Minn. Stat. §412.221, subd.32.

Sec. 14-45. Purpose.

The feeding of wildlife is detrimental to the normal patterns and health of wildlife and can cause a public health nuisance, property damage, and safety hazards that are detrimental to the health, safety, and general welfare of the public.

Sec. 14-46. Feeding of Wildlife Restricted.

No person shall feed or allow the feeding of wildlife, including, but not limited to, the following non-domesticated animals: raccoons, squirrels, chipmunks, deer, turkeys, ducks, geese, pigeons, seagulls, or other wild or feral animals or fowl, within any place within the city. For the purpose of this Article, feeding shall mean provision of any non-birdseed mixtures, hay, salt, mineral, grain, fruit, nut, or vegetable material, or other food source outdoors for the purpose of feeding on the ground, or at a height of less than five (5) feet above the ground.

Sec. 14-47. Presumption.

There shall be a rebuttal presumption that either of the following acts is for the purpose of feeding wildlife:

(a) The placement of non-birdseed mixtures, hay, salt, mineral, grain, fruit, nuts, or vegetable material, or other food source, at t height of less than five (5) feet off the ground; or

(b) The placement of non-birdseed mixtures, hay, salt, mineral, grain, fruit, nuts, or vegetable material, or other food source in a drop feeder, automatic feeder, or similar device regardless of the height.

Sec. 14-48. Exceptions.

This Article shall not apply to the following situations.

(a) *Naturally Growing Materials.* Naturally growing grain, fruit or vegetable material, including gardens, fruit trees, landscaping, and residue from lawns, gardens, and other vegetable materials maintained as a mulch pile; or

(b) *Bird Feeders.* Unmodified, commercially purchased bird feeders or the equivalent; subject to a one cubic foot volume limit for all feeders placed on private property. Birdseed that has dropped from the bird feeder to the ground; or

(c) *Certain Personnel.* Veterinarians, city, county, state, or federal officials, who in the course of their duties have wild animals in their custody or under their management; or

(d) *Mixtures.* Birdseed mixtures and hummingbird nectars are specifically exempted provided they are placed in accordance with provisions in this ordinance in order to discourage use by animals other than small birds.

Sec. 14-49. Enforcement.

(a) This article shall be enforced by the Police Department of the City.

(b) Any person found to be in violation of this Article shall be ordered to cease the feeding immediately.

Sec. 14-50. Penalty.

Any person who violates this Article is guilty of a misdemeanor, and shall, upon conviction thereof, shall be punished by imprisonment for up to ninety days, a fine of up to one thousand dollars, or a combination therof.
(Code 2013, § 412.221; Ord. No. 10-2013, 9-24-13)

Chapter 18

CEMETERIES

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. MUNICIPAL CEMETERY*

***State law reference—**Municipal cemeteries, Minn. Stats. § 412.221, subd. 9.

Sec. 18-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved outside container means a burial vault of material, construction and design approved by the City Manager.

Interment means the permanent disposition of the remains of the deceased person by entombment or burial.

Lot, plot or *burial place* means and shall be used interchangeably and shall apply with like effect to one or more than one adjoining grave.

Memorial means and includes a monument, tombstone, marker, tablet or headstone for family or individual use.

(Code 1987, § 240.05)

Sec. 18-20. Established.

(a) A public cemetery has been established and is continued upon land owned by the city and described as follows:

> Commencing at the intersection of the west line of Government Lot No. 5, Section 22, Township 117, Range 24 with the north line of County Road 110; thence north 545 feet; thence east 468 feet; thence south to the north line of said county road; thence westerly along the north line of said county road to the beginning.

(b) A plat of the cemetery has been placed on file in the office of the City Clerk and is hereby adopted as the official plat of the cemetery that shall be designated the "Mound Cemetery." No persons shall lay out or establish any cemetery or use any lot or land within the city for the burial of the dead except in the Mound Union Cemetery or other tract of land duly designated by ordinance of the city as a cemetery.

(Code 1987, § 240.01)

Sec. 18-21. Use of lots.

No lots shall be used for any purpose other than the burial of human remains and the placing of appropriate memorials.

(Code 1987, § 240.10)

Sec. 18-22. Purchase payments options.

Upon payment in full of the purchase price of the lot, the cemetery will issue a deed conveying the lot executed by the Mayor and the Manager, and the deed shall be recorded in the records of the city. An interim receipt may be issued at that time which may be exchanged for the completed deed that will be ready for delivery within 30 days. Lots may be purchased on a deferred payment contract. Such contract shall be signed by the purchaser and approved by the City Manager. This contract shall stipulate the amount paid and the terms for payment of the balance. Deferred payments shall bear interest at the rate of six percent per annum from the date of execution of the contract. Before a burial is permitted, an amount equal to the actual space used plus the interment and disinterment charges must be paid. No memorial may be installed on the lots purchased on deferred payments until the full purchase price has been paid.

(Code 1987, § 240.15)

Sec. 18-23. Sole ownership.

No lots will be sold in joint ownership or common ownership. The title must stand in one name, but where two or more persons join in paying for a lot, their respective interests and rights may be protected by placing the lot in trust; said trust conveys the lot to the cemetery to be held as a place of burial for the persons specified in the trust agreement. No lot may be placed in trust until the full purchase price has been paid.

(Code 1987, § 240.20)

Sec. 18-24. Subdivision prohibited, transfer, resale, reassignment restricted.

No lots shall be subdivided by the owner. No transfer, resale, reassignment, or other disposition may be made by a lot owner of any interest in his lot except by will under the governing laws of the state without securing the written consent of the City Manager, and the city reserves the first option to repurchase the lot or fractional lot at the original sale price. No lot will be permitted to be resold, disposed of, or otherwise used until the purchase price and all unpaid charges, including charges for permanent or special care have been paid in full.

(Code 1987, § 240.25)

Sec. 18-25. Conditions of sale.

The instrument of conveyance and the rules and regulations of this article, and any amendments thereto constitute the sole agreement between the cemetery and the lot owner. The statement of any employee or agent, unless confirmed in writing by the cemetery, shall not be binding. Lot owners are granted only the right of interment in their lots.

(Code 1987, § 240.30)

Sec. 18-26. Right to establish and revise cemetery rights-of-way and utilities retained.

No easement nor right of interment is granted to any plot owner in any road, drive, or alley, or walk within the cemetery, but such road, drive, alley or walk may be used as a means of access to the cemetery as long as the cemetery devotes it to that purpose. The right to enlarge, reduce, replat, or change the boundaries or grading of the cemetery or of a section from time to time, including the right to modify or change the locations of or remove or regrade roads, drives, or walks, or any part thereof, is hereby reserved. The right to lay, maintain, and operate or alter or change pipe lines for sprinkling systems, drainage, etc., is also expressly reserved, as well as is the right to use cemetery property not sold to individual plot owners for cemetery purposes, including interment of the dead, or for anything necessarily incidental or convenient thereto. The cemetery reserves to itself and to those lawfully entitled thereto, the perpetual right of ingress, egress over the lots for the passing to and from other lots. Only the lot owner and his relatives

shall be permitted on the cemetery lot. Any other person shall be considered as a trespasser, and the cemetery shall owe no duty to the trespasser to keep the property or any memorial or structure thereon in a reasonably safe condition.

(Code 1987, § 240.35)

Sec. 18-27. Owner's mailing address.

It is the duty of the lot owner to notify the cemetery of any change in his post office address.

(Code 1987, § 240.40)

Sec. 18-28. Right to correct errors retained.

The cemetery reserves and shall have a right to correct any errors that may be made by it, either in making interments, disinterments, or removals, or in the description, transfer or conveyance of any interment property, either by canceling such conveyance and substituting and conferring in lieu thereof, other interment property of equal value in a similar location as far as possible, or as may be selected by the cemetery or by returning the amount of money paid on account of such purchase. In the event such error shall involve the interment of the remains of any person in such property, the cemetery reserves and shall have the right to remove or transfer such remains so interred to such other property of equal value and similar location as may be substituted and conveyed in lieu thereof.

(Code 1987, § 240.45)

Sec. 18-29. Superintendent.

The City Manager or its designee shall act as superintendent of the cemetery and shall have control and management of the cemetery and duties as are prescribed by state law and by the City Council. He shall be the actuary of the cemetery, and shall keep a register of all interments and disinterments, including the name, age, place of birth, residence, marital status, name and address of next relative, cause of death and time of interment, disinterment and reinterment.

(Code 1987, § 240.50)

Sec. 18-30. Establishment of rules and regulations.

The City Council shall from time to time adopt by resolution, appropriate rules and regulations governing the rights and duties of visitors, lot owners, and of cemetery personnel. The city personnel shall effect compliance with said rules, but violations of any such rules adopted by resolution shall not constitute a misdemeanor.

(Code 1987, § 240.60)

Sec. 18-31. Burial permits.

Prior to any interment in the city cemetery, a burial permit shall be obtained from the Manager or his designee. This application for burial permit shall be accompanied by a death certificate and statement showing the name, age, and last residence of the deceased, the date, place, and cause of death, the intended place of burial and such other information as required by the state board of health. No permit for burial shall be issued until the application and death certificate have been properly completed and presented. The interment permit shall be obtained from the City Manager after the burial permit has been obtained. The body of a deceased person shall not be brought into the city for burial unless accompanied by a death certificate and permit for removal issued by the city health officer in the district wherein the death occurred.

(Code 1987, § 240.65)

Sec. 18-32. Regulation of interments.

Regulations governing interments are as follows:

(1) No interment other than that of an immediate relative or heir of the lot owner may be made in any lot without the written consent of the lot owner. The City will refer to the MN Statute 524.2-103 to determine the status of a living heir who can authorize use of a grave lot without original written consent. The living heir must submit a notarized document attesting to its living heir status to the former holder of original written consent and a statement that they will be responsible for any and all costs associated with any future dispute involving their living heir status and use of the grave lot.

(2) All orders for interments in lots must be signed by the owner of the lot, its legal representative or living heir.

(3) Lot owners shall not allow interments in their lots in return for a remuneration of any kind.

(4) No interment of two or more bodies shall be made in one grave except in the case of mother and child or two infants buried in one casket; or in the case where one urn of cremated remains is buried with one casket or two urns of cremated remains are buried.

(5) When an interment is to be made in the lot, the location of such interment shall be designated by the lot owner. Should the lot owner fail or neglect to make such designation, the cemetery reserves the right to make the interment in a location designated by the superintendent.

(6) The superintendent and his employees or his designees at the cemetery are the only persons who will be permitted to open graves except when the coroner directs a disinterment.

(7) In order to maintain a high standard of care and to eliminate sunken graves, it is required that all burials whether in a casket or in an urn, must be made in approved outside containers. All such containers must be made and installed as to meet specifications established by the cemetery.

(8) All charges for interment and/or services in connection therewith shall be paid to the cemetery before interment, and the cemetery will issue a receipt for these charges upon request.

(9) No interment may be made in the cemetery unless all laws, ordinances, rules and regulations have been complied with and the purchase price of the lot to be used has been paid.

(10) Interment in a single grave area must be made in regular order. No choice of location is permissible in single grave sections nor can single graves be purchased or reserved in advance of need. However, single graves may be procured in preferred locations by the purchase of one grave in a two-grave lot. These may be purchased in advance of need. Purchasers of single graves or preferred single graves will be given the location card but no deed will be issued therefor.

(11) All interments must be made at the time and in a manner upon the charges fixed by the cemetery.

(12) Cemetery personnel will not be responsible for any order given by

telephone or for any mistake occurring from the want of precise and proper instruction as to the particular space, size of grave, and location in a plot where interment is desired. Cemetery personnel will be in no way liable for any delay in the interment of a body when a protest to the interment has been made or where the rules and regulations have not been complied with and reserves the right under such circumstances to delay burial until the full rights have been determined. All protests on interments shall be filed in the cemetery office.

(13) The cemetery will not be liable for the identity of the person to be interred.

(Code 1987, § 240.70; Ord. No. 08-2015, 11-22-2015)

Sec. 18-33. Opening of graves and disinterment.

(a) Written permission of the lot owner and the next of kin of the decedent shall be filed with the cemetery office, a permit from the City Manager or his designee shall be secured and submitted, and the required fees paid before a grave may be opened. These actions shall be completed two days in advance of disinterment.

(b) Disinterments may be made in order to place the body in a larger or better lot in the cemetery after there has been an exchange or purchase of lots for that purpose. However, the body may not be removed from the cemetery without the permission of the city health officer. A removal contrary to the expressed or implied wish of the original lot owner is forbidden.

(c) All removals must be made by the superintendent, his employees, or his designees after the proper permits have been filed and the required fees paid and a receipt issued.

(d) When the coroner directs the disinterment for the purpose of holding an inquest and has filed with the cemetery his signed authorization to release the body to himself and his lawful agents, the disinterment may be made. In such cases, the disinterment must be made by the coroner or his lawful agents. No cemetery personnel will assist the coroner or his agents in such disinterment.

(e) The cemetery assumes no liability for damage to any casket or outside container in making a removal. When, in the opinion of the superintendent, a new outside container is needed at the time of removal, it must be provided for by the person arranging for the removal.

(Code 1987, § 240.75)

Sec. 18-34. Maintenance and care.

(a) *Grounds not structures.* The general care of the cemetery includes the cutting and sprinkling of the grass at reasonable intervals, the raking and cleaning of the grounds, and the pruning of shrubs and trees that may be placed by the cemetery, meaning and intending the general preservation of the lots and grounds, walks, roadways, boundaries and structures, to the end that said grounds shall remain and be reasonably cared for as cemetery grounds forever. The general care shall in no case mean the maintenance, repair or replacement of any memorial, structure placed or erected upon lots; nor the doing of any special or unusual work in the cemetery, including work caused by poor soil; nor does it mean the reconstruction of any marble, granite, bronze or concrete work on any lot, or any portion or portions thereof in the cemetery, caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasions, insurrections, riots, or by the order of any military or civil authority, whether the damage be direct or collateral, other than as herein provided.

(b) *Additional care permitted.* Lot owners desiring additional care of their lots may

arrange for such care with the cemetery office, which shall give an estimate of the cost of the work desired. This may be provided for by annual payments made by the lot owner.

(c) *Planting on lots.* Planting of flowers, flower beds, small plants, shrubs or trees will not be permitted, but the cemetery will provide general beautification of the area which will result in a more orderly arrangement and will harmonize with the general plan. Flower vases and potted plants are not permitted. However, cut flowers are permitted, and lot owners may install bouquet holders which are recessed in the ground and which can be inverted when empty. The cemetery reserves the right to revise and remove any and all shrubbery and trees as it deems necessary, without the obligation of replacement in kind or amount in order to maintain the harmonious design of the cemetery.

(Code 1987, § 240.80)

Sec. 18-35. Memorials.

(a) *Erection; fees.* Lot owners shall provide for the erection of a grave marker in the space designated by the superintendent after the burial. No memorial shall be placed until the price of the space used for burial and all burial fees have been paid. All placements of memorials or markers must be conducted by a City approved designee. No markers may be delivered or installed between November 1 and April 1.

(b) *Materials.* All markers placed shall be of bronze or natural stone. Limestone, sandstone, or other material which will not assure relative permanency shall not be used. All stone shall be first grade clear stone for memorial purposes, shall be free from sap or other impurities which will cause rust stain, etc.; that it will not chip or crack; and agree that should such faults develop within five years from day of setting, the memorial will be replaced, without cost to the cemetery or the lot owner. No artificial stone of any description is allowed. Bronze content shall be not less than 85 percent copper and not more than five percent lead, ten percent zinc, five percent tin, all case from virgin material, average thickness of three-sixteenths-inch to one-quarter-inch.

(c) *Lettering and carving.* Raised lettering and carving shall not be less than three-sixteenths-inch raised, incised lettering may be used, but no skinned carving will be allowed. All markers must be in one piece and set level with the ground.

(d) *Size and quantity.* The markers installed on single graves and lots may not exceed the following base sizes:

(1) Children's single grave sections, 24 inches by 12 inches with a 4” concrete border.

(2) Adult's single grave sections, up to 24 inches by 14 inches with a 4” concrete border.

(3) Two single grave markers for a family double grave can be mounted in a single concrete block and treated as one double marker. These dimensions could then be 24” x 14” plus 4” of concrete in between. A 4” concrete border then surrounds both markers for a total combined length of 60”.

(4) Only one grave marker will be allowed per grave lot and no marker shall bear more than one inscription unless more than one body was interred in the grave.

(5) All markers will be flush with the ground with the exception of those grave lots in Division A.

(e) *Marker foundations.* All foundations must be of sufficient depth as to support the marker.

(f) *Marker placement.* All markers shall be placed parallel to and two inches from the lot line nearest the roadway or pathway perpendicular to the subject graves. Where two separate and opposite roadways or pathways are equal distance from said lot, the Council will, by resolution, designate the lot end for marker placement.

(g) *Conformance to section provisions.* Markers conforming hereto may be used throughout the cemetery. Monuments, tombstones, tablets or headstones shall not be used except in that part of the cemetery described as lying within the limits of the City of Minnetrista.

(Code 1987, § 240.8; Ord. No. 08-2015, 11-22-2015; Ord. No. 15-2016, 12-04-2016)

Chapter 22

ELECTIONS*

***State law reference—**Minnesota Election Law, Minn. Stats. chs. 200, 201, 202A, 203B, 204B, 204C, 204D, 205, 205A, 206, 208, 211A, 211B, 211C; municipal elections, Minn. Stats. ch. 205.

Sec. 22-1. Date of regular election.

The regular city election shall be the first Tuesday after the first Monday in November of each even-numbered year.

(Code 1987, § 150.05)

State law reference—Similar provisions, Minn. Stats. § 205.07.

Chapter 22

ELECTIONS*

***State law reference—**Minnesota Election Law, Minn. Stats. chs. 200, 201, 202A, 203B, 204B, 204C, 204D, 205, 205A, 206, 208, 211A, 211B, 211C; municipal elections, Minn. Stats. ch. 205.

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State law reference—Similar provisions, Minn. Stats. § 205.07.

Chapter 26

EMERGENCY MANAGEMENT AND SERVICES

ARTICLE I. IN GENERAL

Secs. 26-1—26-18. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT*

***State law reference—**Emergency management, Minn. Stats. ch. 12.

Sec. 26-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disaster means a situation which creates an immediate and serious impairment to the health and safety of any person, or a situation which has resulted in or is likely to result in catastrophic loss to property or the environment, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

Emergency means an unforeseen combination of circumstances that call for immediate action.

Emergency management means the preparation for and the carrying out of emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters, from acute shortages of energy, or from incidents occurring at nuclear power plants that pose radiological or other health hazards. These functions include, without limitation, firefighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency human services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, implementation of energy supply emergency conservation and allocation measures, and other functions related to civilian protection, together with all other activities necessary or incidental to preparing for and carrying out these functions. The term "emergency management" includes those activities sometimes referred to as civil defense or emergency preparedness functions.

Emergency management forces means the total personnel resources engaged in city-level emergency management functions in accordance with the provisions of this article or any rule or order thereunder. This includes personnel from city departments, authorized volunteers, and private organizations and agencies.

Emergency management mutual aid means any disaster or major incident which requires the dispatching of city personnel, equipment or other necessary resources within or without the city limits.

Emergency management organization means the staff element responsible for coordinating city-level planning and preparation for disaster response. This organization provides city liaison and coordination with federal, state and local jurisdictions relative to disaster preparedness activities, major incidents, mutual aid, and other projects consistent with this article and assures implementation of federal, state, county and other program requirements.

Energy supply emergency means a state of emergency declared by the executive Council or the legislature pursuant to Minn. Stats. § 216C.15 and rules adopted under that section.

Lake Minnetonka Regional Emergency Management, Preparedness Planning and Review Committee means a committee made up of the Lake Minnetonka area emergency management directors which develops, renews and establishes a basic emergency plan, and identifies and coordinates training for member communities and reviews local plans, exercises, major incidents and disaster responses which are consistent with this article.

Major incident means any incident which exhausts local resources.

(Code 1987, § 220.05; Ord. No. 100-1998, 10-10-1998)

State law reference—Similar provisions, Minn. Stats. § 12.03.

Sec. 26-20. Policy and purpose.

Because of the existing possibility of the occurrence of disasters of unprecedented size and destruction resulting from fire, flood, tornado, blizzard, destructive winds or other natural causes, or from sabotage, hostile action, or from hazardous material mishaps of catastrophic measure or other major incidents, and in order to ensure that preparations of the city will be adequate to deal with such disasters and generally, to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of this city, it is hereby found and declared to be necessary:

(1) To establish a city emergency management organization responsible for city planning and preparation for emergency government operations in time of disasters.

(2) To provide for the exercise of necessary powers during emergencies and disasters.

(3) To provide for the rendering of mutual aid between the city, and other political subdivisions with respect to the carrying out of emergency preparedness functions.

(4) To comply with the provisions of the Minnesota Emergency Management Act of 1996 (Minn. Stats. ch. 12).

(5) To participate as a member of the Lake Minnetonka Regional Emergency Management, Preparedness Planning and Review Committee and accept its emergency plan as the city's basic plan for responses to emergencies, disasters, major incidents, mutual aid and other projects consistent with this article and Minn. Stats. ch. 12.

(Code 1987, § 220.01; Ord. No. 100-1998, 10-10-1998)

Sec. 26-21. Establishment of an emergency management organization.

There is hereby created with the city government an emergency management organization which shall be under the supervision and control of the emergency management director, hereinafter called the director. The director shall be appointed by the Mayor. The director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization.

(Code 1987, § 220.10; Ord. No. 100-1998, 10-10-1998)

State law reference—Local organization required, Minn. Stats. § 12.25, subd. 1.

Sec. 26-22. Powers and duties of the director.

(a) The director shall represent the city on any regional or state conference for

emergency management. The director may develop additional mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted, and shall present such agreements to the city for its action. Such arrangements shall be consistent with the emergency plan. The director shall also be the city's representative on the Lake Minnetonka Regional Emergency Management, Preparedness Planning and Review Committee.

(b) The director shall make assessments of personnel, businesses and industries, resources and facilities of the city as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency, major incident or disaster.

(c) The director shall prepare a comprehensive emergency plan for the emergency preparedness of the city and shall present such plan to the city for its approval. When the Council has approved the plan by resolution, it shall be the duty of all city agencies and all emergency preparedness forces of the city to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The director shall coordinate the basic emergency management activities of the city to the end that they shall be consistent and fully integrated with the basic emergency plan of the Lake Minnetonka Regional Emergency Management, Preparedness Planning and Review Committee, and federal and state governments.

(d) In accordance with the emergency plan, the director shall institute such training programs, public information programs and conduct practice warning alerts and emergency exercises as may be necessary to assure prompt and effective operation of the emergency plan when a disaster, major incident or mutual aid occurs.

(e) The director, during an emergency, major incident or mutual aid, shall utilize the personnel, services, equipment, supplies and facilities of existing departments and agencies of the city to the maximum extent practicable. The officers and personnel of all such departments and agencies shall be, to the maximum extent practicable, cooperative with and extend such services and facilities to the emergency management organization. The head of each department or agency in cooperation with the director shall be responsible for the planning and programming of such emergency activities as will involve the utilization of the facilities of the department or agency.

(f) The director shall, in cooperation with the existing departments and agencies affected, assist in the organizing, recruiting and training of such emergency management personnel that may be required on a volunteer basis to carry out the emergency plans. To the extent that such emergency personnel are recruited to augment a regular department or agency for emergencies, they shall be assigned to such departments or agencies and shall be under the administration and control of said departments or agencies.

(g) The director shall carry out all orders, rules and regulations issued by the governing authority with reference to emergency management.

(h) The director shall prepare and submit such reports on emergency preparedness activities as may be requested by the City Council.

(Code 1987, § 220.15; Ord. No. 100-1998, 10-10-1998)

Sec. 26-23. Emergency regulations.

(a) Whenever necessary to meet a declared emergency or to prepare for such an emergency for which adequate regulations have not been adopted by the governor or the City Council, the Council may by resolution promulgate regulations, consistent with the applicable federal or state law or regulation, respecting the conduct of persons and the use of property during emergencies; the repair, maintenance, and safeguarding of essential public services, emergency

health, fire, and safety regulation, drills, or practice periods required for preliminary training, and all other matters which are required to protect public safety, health, and welfare in declared emergencies. It shall be unlawful to violate any such regulations.

(b) Every resolution of emergency regulations shall:

(1) Be in writing;

(2) Be dated;

(3) Refer to the particular emergency to which it pertains, if so limited; and

(4) Be filed in the office of the City Manager.

A copy shall be kept posted and available for public inspection during business hours. Notice of the existence of such regulation and its availability for inspection at the City Manager's office shall be conspicuously posted at the front of the city hall or other headquarters or at such other places in the affected area as the Council shall designate in the resolution. By like resolution, the Council may modify or rescind any such regulation.

(c) The City Council may rescind any such regulation by resolution at any time. If not sooner rescinded, every such regulation shall expire at the end of 30 days after its effective date or at the end of the emergency to which it relates, whichever comes first. Any resolution, rule or regulation inconsistent with an emergency regulation promulgated by the Council shall be suspended during the period of time and to the extent such conflict exists.

(d) During a declared emergency, the director is, notwithstanding any statutory or charter provision to the contrary, empowered through its governing body acting within or without the corporate limits of the city, to enter into contracts and incur obligations necessary to combat such disaster by protecting the health and safety of persons and property and providing emergency assistance to the victims of such disaster. The director may exercise such powers in the light of the exigencies of the disaster without compliance with the time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds including, but not limited to, publication of resolutions, publication of call for bids, provisions of personnel laws and rules, provisions relating to low bids, and requirements for budgets.

(Code 1987, § 220.25; Ord. No. 100-1998, 10-10-1998)

Sec. 26-24. Emergency management a governmental function.

All functions thereunder and all other activities relating to emergency management are hereby declared to be governmental functions. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article or under the workers compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(Code 1987, § 220.30; Ord. No. 100-1998, 10-10-1998)

Sec. 26-25. Authorization of mutual aid in emergencies.

(a) The city finds it desirable and necessary to authorize the director to dispatch city equipment and personnel to local communities who request aid to combat their emergency, disaster, or major incident consistent with this article, and section 26-22(e).

(b) The director shall evaluate the internal needs of the city, and dispatch appropriate available aid. The director shall immediately recall, order and terminate the use of any dispatched equipment and personnel when the need for their use no longer exists, or earlier, when it appears in the best interest of the city. Aid requested from outside the Lake Minnetonka regional area, or

extended local aid, shall require mutual agreement between the director and the City Manager or their designees.

(c) Actions of the director shall be authorized acts of the city. All provisions for compensation of personnel, rental of equipment, liability insurance coverage, workman's compensation insurance and all other safeguards and matters pertaining to the city, its equipment and personnel, shall apply in each case as if specifically authorized and directed at such time, whether or not the City Council or authority of the place in which the disaster, major incident, mutual aid, or other occurrence exists, has previously requested and provided for assistance and the use of equipment and personnel under a mutual protection agreement or other type protection agreement within the city.

(Code 1987, § 220.40; Ord. No. 100-1998, 10-10-1998)

Secs. 26-26—26-53. Reserved.

ARTICLE III. ALARM SYSTEMS*

***State law reference—**Alarm transmission telephone devices, Minn. Stats. § 237.47.

Sec. 26-54. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alarm system means any mechanical or electrical alarm installation designed to be used for the prevention or detection of burglary, robbery, medical, carbon monoxide, fire or other condition on the premises that contains an alarm installation. An automobile device shall not be considered an alarm system under this article.

Alarm user means any person, owner, occupant, tenant, firm, partnership, association, corporation, company or organization of any kind upon whose premises, building, structure or facility an alarm system is maintained.

Calendar year means the period January 1 through December 31 of each year.

False alarm means an alarm signal eliciting a response by public safety personnel when a situation requiring a response does not, in fact, exist and which is caused by the activation of the alarm system through mechanical failure, alarm malfunction, improper installation, the inadvertence of the alarm owner or lessee of the alarm system, or caused by climatic conditions such as tornadoes, thunderstorms, utility line mishaps, violent conditions of nature or any other conditions which are clearly beyond the control of the alarm manufacturer, installer, owner or alarm user. Federal and/or state agencies and political subdivisions of the federal or state government shall be exempt from user fees or false alarms otherwise prohibited by this article.

Public safety personnel means employees of the city Fire and Police Departments including firefighters, police officers and other emergency service personnel who may respond to assist on requests for mutual aid.

(Ord. No. 01-2006, § 940.05, 1-22-2006)

Sec. 26-55. Violations.

Any alarm user who, within one calendar year, has more than two false police alarms, or more than two false fire alarms, shall be in violation of this article. The city shall impose a fee, which shall be on a graduated scale, as established by the city.

(Ord. No. 01-2006, § 940.10, 1-22-2006, Ord. No. 09-2015, 11-22-2015)

Sec. 26-56. Review false alarm calls.

The Chief of Police, or the chief's designee, shall review all alarm calls to the Police Department. The Chief of Police, or the chief's designee, will notify all households, businesses or other establishments, which utilize alarm systems, when an alarm has been responded to by the Police Department. The Police Department shall keep an annual record of alarm calls and shall notify all households, businesses or other establishments, which utilize alarm systems, when they are in violation of this section. The Fire Chief, or the chief's designee, shall follow the same procedure listed in this section.

(Ord. No. 01-2006, § 940.15, 1-22-2006)

Sec. 26-57. Process for notice of violations.

(a) Upon receipt and determination of the third false police alarm report or the third false fire alarm report to an address, the Chief of Police, the chief's designee, the Fire Chief, or designee, after review, shall then assess the alarm user for an alarm user's violation fee. The alarm user must submit the required violation fee to the city within 30 working days after receipt of invoice. Failure to pay the fee within 30 days will cause the alarm user to be considered delinquent and subject to penalty of a full ten percent of the fee.

(b) All delinquent charges against the respective properties served may be certified to the county auditor for collection with real estate taxes in the following year. In addition the city shall also have the right to bring civil action or take other legal remedies to collect unpaid fees.

(c) Any subsequent false police or fire alarms at that address within the calendar year shall result in an increased fee in accordance with the fee schedule. This process shall be repeated for each and every false alarm in excess of two false police alarms and in excess of two false fire alarms during each calendar year.

(Ord. No. 01-2006, § 940.20, 1-22-2006; Ord. No. 09-2015, 11-22-2015)

Sec. 26-58. Duration of the record of false alarms.

The record of all responded to false alarms will be closed, and will expire at the end of each calendar year. False alarms, not occurring during the current calendar year, shall not be counted as a false alarm for fee enhancement purposes.

(Ord. No. 01-2006, § 940.25, 1-22-2006)

Sec. 26-59. Letter of contestation.

(a) After the Chief of Police, Fire Chief, or designees determine that a false alarm has occurred at an address, the alarm user at that address may submit a letter of contestation to the Chief of Police or the Fire Chief to explain the cause of the alarm activation. If the Chief of Police or Fire Chief determine that the alarm was caused by conditions beyond the control of the alarm user, the alarm will not be counted as a false alarm at that address.

(b) False alarms will be excused if they are the result of an effort or order to upgrade, install, test, or maintain an alarm system and if the police or Fire Department is given notice in advance of said upgrade, installation, test or maintenance.

(Ord. No. 01-2006, § 940.30, 1-22-2006)

Sec. 26-60. Confidentiality.

(a) Information submitted in compliance with this article shall be held in confidence and shall be deemed a confidential record exempt from discovery to the extent permitted by law.

(b) Subject to requirements of confidentiality, the Chief of Police and Fire Chief may develop and maintain statistics for the purpose of ongoing alarm systems evaluation.

(Ord. No. 01-2006, § 940.35, 1-22-2006)

Sec. 26-61. Communication center.

No automatic dialing devices shall be connected to the Police Department, the Fire Department or the county sheriff's communication center through any telephone line without that agency's express written permission. Use of automatic dialing devices will be considered a violation of this article.

(Ord. No. 01-2006, § 940.40, 1-22-2006)

Chapter 30

FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 30-1—30-18. Reserved.

ARTICLE II. FIRE DEPARTMENT*

***State law reference—**Firefighter training and education, Minn. Stats. ch. 299N.

Sec. 30-19. Established.

There is hereby established in the city a volunteer Fire Department.

(Code 1987, § 230.05)

Sec. 30-20. Firefighter's relief association authorized.

The members and officers of the Fire Department shall organize themselves into a firefighter's relief association, under rules, regulations, and bylaws subject to approval by the City Council.

(Code 1987, § 230.45)

Sec. 30-21. False alarms; refusal to obey Fire Chief.

It shall be unlawful for any person to neglect or refuse to obey any reasonable order of the chief at a fire, or to interfere with the Fire Department in the discharge of its duties.

(Code 1987, § 230.50)

Sec. 30-22. Fire Code Compliance Official.

The City Manager may designate a code compliance official from among the members of the Fire Department or building inspection department to perform duties as assigned by the Fire Chief through the issuance of notices, warning tickets or citations in lieu of arrest or detention.

(Code 1987, § 230.55; Ord. No. 7, 8-17-1987)

Secs. 30-23—30-45. Reserved.

ARTICLE III. FIRE CODE AND OTHER FIRE SAFETY AND FIRE PREVENTION STANDARDS

Sec. 30-46. Code adopted.

(a) The 2007 Minnesota State Fire Code, as adopted pursuant to the authority of Minn. Stats. § 299F.011, including appendix chapter D, is hereby adopted by reference as the fire code for the city. Such code, except as hereinafter amended or modified, is incorporated in this article as completely as if set out in full and includes Minn. Rules ch. 7511, and all amendments and changes adopted thereto. One copy of this Code shall be on file in the office of the City Clerk-treasurer.

(b) The 2007 Minnesota State Fire Code incorporates the 2006 Edition of the International Fire Code as promulgated by the International Code Council, Inc., and made a part of the Minnesota Rules.

(c) This article is adopted for the purpose of regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the city and providing for the issuance of permits for hazardous uses or operations.

(d) If there is a conflict between or among any of the provisions or policies of the stated codes, standards or policies, the following orders of precedence shall apply:

(1) This article.

(2) Minnesota State Fire Code.

(3) Standards of the National Fire Protection Association or other nationally recognized fire safety standards as are approved by the Fire Chief.

(Code 1987, § 390.05; Ord. No. 09-2007, 9-11-2007)

Sec. 30-47. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of appeals means the City Council.

Code official means the Fire Chief, fire marshal, code enforcement officer, or other designated authority charged by the City Council or the state building code with the duties of administration and enforcement of this Code, or a duly authorized representative. For purposes of enforcing this Code it also includes the state fire marshal and the state fire marshal representatives.

Jurisdiction means the municipal limits of the city.

(Code 1987, § 390.10; Ord. No. 09-2007, 9-11-2007)

Sec. 30-48. Penalties.

(a) Any person who shall violate any of the provisions of this article or standards hereby adopted or fails to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall fail to comply with such an order as affirmed or modified by the City Council or by a court of competent jurisdiction, within the time fixed herein or therein, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder and from which no appeal has been taken, shall be guilty of an offense punishable as a misdemeanor for each and every such violation and noncompliance respectively.

(b) Notice of violations shall be given in writing and shall contain a reasonable time to comply as well as a statement explaining the right to appeal.

(c) The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

(d) The application of the penalties in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Code 1987, § 390.15; Ord. No. 09-2007, 9-11-2007)

Sec. 30-49. Enforcement.

The Fire Chief, the code official or their representatives or other authority designated by the city is authorized to administer and enforce the provisions of this article.

(Code 1987, § 390.20; Ord. No. 09-2007, 9-11-2007)

Sec. 30-50. Recreational fires.

(a) *Regulated.* No person shall, commence, conduct or allow any recreational fire in violation of the conditions described in this section. The regulations contained in this section and the permit requirement in section 30-51 are not applicable for fires contained in a charcoal grill, camp stove, or other similar device.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Attendant means the same as a competent, unimpaired adult.

Burner means a firebox, a barrel or similar container used for an outdoor fire, but not including grills or barbecues used principally for the cooking of food.

Combustible material means things such as wood, paper and plastics.

Competent, unimpaired adult means a person over 18 years of age who is not under the influence of alcohol or other drugs, who shall be the responsible party for directly supervising a recreational fire and who shall be responsible for ensuring compliance with this section.

Fire Chief means the appointed Fire Chief or any individual designated by the Fire Chief to perform specific duties.

Recreational fire means a fire set for cooking or warming or other recreational purposes which is not more than three feet in diameter and two feet in flame height, and has a noncombustible separation between the fire area and adjoining combustible material such as bricks or stones and has had the ground twenty-five feet from the base of the fire cleared of all combustible material.

Starter fuels means dry, untreated, unpainted wood or charcoal fire starter. Paraffin candles, commercially available products for use in starting charcoal grills and alcohols are permitted as starter fuels and as aides to ignition only. Propane gas torches or other clean burning devices causing minimal pollution may be used to start up a recreational fire. The term "starter fuels" does not include gasoline, diesel fuel, kerosene, and heating oil which are expressly prohibited

Wood means dry, clean wood from trees only such as twigs, branches, limbs, charcoal and cord wood. Burning wood that is green; leaves or needles; grass clippings; garden waste; wood that is rotten, oil soaked or treated with paint, glue or preservative; plywood, particle board, chip board, finished paneling, or painted, treated, or stained cardboard or paper is expressly prohibited.

(c) *Requirements.* The following general requirements shall apply to all recreational fires:

(1) The recreational fire shall be attended by a competent, unimpaired adult at all times that smoke is produced from the fire.

(2) Equipment to control and extinguish the fire shall be immediately available to the attendant at the site of the fire at all times during burning. This may include, hand tools, hose lines, and water buckets.

(3) A means of summoning the Fire Department shall be available for use by the attendant.

(4) Only wood and starter fuels, as defined in subsection (b) of this section may be burned in a recreational fire.

(5) The recreational fire may not be started or continued in situations where prevailing winds or other factors create an unsafe condition or direct smoke toward other nearby residences.

(6) The recreational fire shall be located 25 feet from any structure or combustible material unless the fire is in an approved container and is not less than 15 feet (4572 mm) from a structure.

(7) Recreational fires may be conducted between 7:00 a.m. and 2:00 a.m.

(d) *Prohibited conditions.* Recreational fires shall not be allowed, if any of the following conditions exist:

(1) A fire hazard exists or develops during the course of the burn.

(2) Pollution or nuisance conditions develop during the course of the burn.

(3) The fire is left unattended, or the attendant is impaired.

(4) The fire is allowed to smolder with no flame visible and is unattended.

(5) Any of the conditions of this article are violated during the course of the burn.

(Code 1987, § 390.25; Ord. No. 09-2007, 9-11-2007, Ord. No. 14-2016, 12-04-2016)

Sec. 30-51. Burning restrictions.

(a) *Open burning prohibited.* In addition to the requirement contained in section 30-50, it shall be unlawful for any person to start or allow burning any open fire, except a recreational fire on any private property within the city or in certain exceptions as described section 30-51(e).

(b) *Rules adopted by reference.* Minn. Rules pts. 7005.0705—7005.0805 of the Minnesota Pollution Control Agency are hereby adopted by reference and made a part of this Code as if fully set forth herein.

(c) *Person designated to issue permits.* The Fire Chief or Deputy Fire Marshal are hereby authorized to issue permits under this section, and may establish reasonable permit conditions for open burning consistent with the rules adopted herein.

(d) Amendment to the state fire code, Section 105.6.30, are hereby adopted by reference and made a part of this Code as fully set forth herein, with the exception of deleting "Open Burning" as adopted by the state fire code, and replacing it with the following section (e):

(e) *Certain Open Fires Permitted*. An open burning permit may be issued for the following purposes:

(1) Instruction and training of firefighting personnel.

(2) Abatement of hazards that, in the opinion of the fire chief, cannot be abated by other reasonable means.

(3) Management of vegetation by the jurisdiction, other governmental agencies, or other individuals that, in the opinion of the fire chief, show a valid need, and under the direction of the fire department.

(4) Special events or ceremonies by recognized organizations, under the direct supervision of the fire department.

(Code 1987, § 390.27; Ord. No. 09-2007, 9-11-2007; Ord. No. 14-2016, 12-04-2016)

Sec. 30-52. Negligent fires.

Section 104.10 of the 2007 Minnesota State Fire Code is hereby amended by adding a new Section 104.10.2 to read as follows:

> It shall be an offense punishable as a misdemeanor to negligently or carelessly start or cause to be started a fire which endangers the property of another or to negligently or carelessly allow a fire to extend beyond the limits of one's property or property within one's control. The term "property" shall include real and personal property.

(Code 1987, § 390.30; Ord. No. 09-2007, 9-11-2007)

Sec. 30-53. Permits.

Section 105 of the 2007 Minnesota State Fire Code pertaining to permits is hereby amended by adding the following provisions:

(1) *Permit required.* No person shall engage in any activity, operation, practice or function listed below without first having obtained a permit from the code official, Fire Chief or his representative:

a. Installation, modification, changing configuration and/or removal of any fire protection systems.

b. Installation and removal of underground or aboveground tanks for the storage or use of flammable or combustible liquids, gas or any hazardous material.

c. Spray booths or spray areas involving spraying or dipping operations utilizing flammable or combustible liquids. Spray booths involving the application of powders by powder spray guns, electrostatic powder spray guns, fluidized beds, or electrostatic fluidized beds.

d. Refinishing and resurfacing operations utilizing flammable and combustible liquids.

e. Tents, canopies, and temporary membrane structures. A permit is required for the public use or the use in public areas of tents and membrane structures having an area over 400 square feet, and canopies in excess of 600 square feet, or when heat sources, cooking equipment, spark/ember producing processes or open flames are contained within or near the tent, canopy, or structure.

f. Carnivals, fairs, and other special events open to the public.

g. Smoke removal systems as required by the fire code.

h. Storage of explosives, black powder, and blasting agents.

i. An application for the use of explosives shall require a permit initially made at the city's designated police services. Exception: The Police and Fire Departments are not required to apply for a permit.

j. Sale of fireworks, fireworks displays and pyrotechnic special effects material.

(2) *Fees.* The fees for such permits shall be in an amount established by the City Council by resolution or ordinance.

(Code 1987, § 390.35; Ord. No. 09-2007, 9-11-2007)

Sec. 30-54. Appeals.

Section 108 of the 2007 Minnesota State Fire Code is hereby deleted in its entirety and is replaced to read as follows:

(1) Whenever the code official shall disapprove or refuse to grant a permit, or issue an order or notice as provided in the state fire code, or when it is claimed that the state fire code has been wrongly applied or interpreted, the aggrieved person may appeal the decision of the code official as provided in this section.

(2) The aggrieved person must first request the code official to reconsider his decision. The request to reconsider must be made within ten days from the date of the code official's initial decision and must submit in writing the reasons for the request for reconsideration.

(3) A person aggrieved by the final decision of the code official may appeal the decision to the board of appeals. The appeal must be in writing and made within ten days of the date of the final decision of the code official.

(4) A person aggrieved by the decision of the board of appeals may appeal to the state fire marshal in accordance with Minn. Stats. § 299F.011, subd. 5.

(5) All requests and appeals specified in this section shall be made in writing. An aggrieved party who does not appeal within the time limits specified shall be deemed to have waived his right to appeal and shall be bound by the latest decision in the appeal process.

(Code 1987, § 390.40; Ord. No. 09-2007, 9-11-2007)

Sec. 30-55. Premises identification.

Section 505.1 of the 2007 Minnesota State Fire Code is amended to read as follows:

(1) Address numbers.

a. New and existing buildings shall have approved address numbers, a building number, or approved building identification placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of four inches high with a minimum stroke width of one-half inch.

b. Buildings which have a range of addresses for one building shall display the range of numbers or addresses from the lowest to the highest.

c. Buildings with multiple tenants/addresses shall place approved numbers or addresses on front and rear doors identifying each address in the manner required in this section.

d. Dwellings that are remote/auxiliary from the main dwelling shall display approved numbers or addresses on each dwelling in the

manner required in this section and in such a manner as to be visible from either direction of travel on the road or street fronting the property.

e. If any dwelling, business or building as required, is too remote from the fronting road or street to make it unreasonable to be seen from the fronting road or street, a sign or post with visible and legible approved numbers or addresses, or range of numbers or addresses from lowest to highest, shall be placed at the driveway entrance in such a manner that the numbers or addresses are visible from either direction of travel on said road or street.

f. Addressing of residential and commercial properties that do not fall under the provisions of subsection (1)e of this section, and as such, are visible from the roadway they are fronting shall conform to the following:

Building Setback (feet)	*Minimum Height of Address Size (inches)*
0 to 40	4
41 to 60	6
61 or greater	8

g. Approved numbers of addresses shall be placed on all construction sites in such a position as to be plainly visible and legible from the street or road fronting the property.

(2) *Street or road signs.* Streets and roads, both public and private shall be identified with approved signs. Temporary signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles. Signs shall be of an approved size, weather resistant and shall be maintained until replaced be permanent signs.

(Code 1987, § 390.50; Ord. No. 09-2007, 9-11-2007)

Sec. 30-56. Fire hydrants.

Section 508.5.1 of the 2007 Minnesota State Fire Code is hereby amended to read as follows:

(1) *Distances.* Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 150 feet from a hydrant on a fire apparatus road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the code official.

a. For buildings equipped throughout with an approved fire sprinkler system installed in accordance with NFPA 13 or NFPA 13R, the distance requirement shall be one fire hydrant within 100 feet of the Fire Department connection and 600 feet for all

other fire hydrants, unless otherwise approved by the Fire Chief or code official.

b. In buildings with high piled combustible storage or buildings that are inherently hazardous in nature because of hazardous processes or which store, use, or handle flammable, combustible or hazardous materials, additional fire hydrants may be required by the code official.

(2) *Exceptions.* For Group R-3 and Group U occupancies, the hydrant distance requirements shall be 300 feet.

(Code 1987, § 390.55; Ord. No. 09-2007, 9-11-2007)

Sec. 30-57. Hydrants.

Section 508.5.5 of the 2007 Minnesota State Fire Code is hereby amended to read as follows:

(1) *Clear space around hydrants.* A six-foot clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved by the code official or the Fire Chief.

(2) *Accessible route.* An approved accessible route to the hydrant from a public access or way shall be provided and maintained.

(Code 1987, § 390.60; Ord. No. 09-2007, 9-11-2007)nn

Chapter 34

LAW ENFORCEMENT

ARTICLE I. IN GENERAL

Sec. 34-1. The Police Department.

The administration of the Police Department shall be determined by the City Council upon the recommendation of the City Manager.

(Ord. No. 11-2012, 12-23-12)

Secs. 34-2—34-18. Reserved.

ARTICLE II. POLICE DEPARTMENT

Sec. 34-19. Computerized criminal history background check.

(a) *Requirements.* The Police Department is authorized to conduct a state computerized criminal history background investigation (CCH investigation) on applicants for positions with the city, and applicants for identified city licenses and permits, as provided by this section. The CCH investigation shall be performed pursuant to the requirements of the state bureau of criminal apprehension for noncriminal justice purposes, as those guidelines may be amended, which are on file with the City Clerk and the Chief of Police.

(b) *Job or volunteer CCH investigation.* This section applies only to applicants who are finalists for paid or volunteer positions with the city, where the City Manager has determined that conviction of a crime may relate directly to the position sought. The Police Department may not perform a CCH investigation unless the applicant consents in writing to the investigation and to the release of the investigation information to the City Manager and other city staff as may be appropriate, unless authorized by law. An applicant's failure to provide consent may disqualify the applicant for the position sought. If the City Manager rejects the applicant's application due, solely or in part, to the applicant's prior conviction of a crime, subject to the exception set forth in Minn. Stats. § 364.09, as amended, the City Manager must notify the applicant in writing of the following:

(1) The grounds and reasons for the rejection;

(2) The applicable complaint and grievance procedure set forth in Minn. Stats. § 3674.06, as amended;

(3) The earliest date the applicant may reapply for employment; and

(4) That all competent evidence of rehabilitation will be considered upon reapplication.

(c) *CCH investigation for approval or denial of a license or permit.* The Police Department is authorized to conduct a CCH investigation to assist in determining the factual basis for the approval or denial of a city license or permit where the health, safety or welfare of the public is a concern based on the activity regulated and subject to the license or permit. A CCH investigation is required for the applicant for a license or permit under the following sections, as amended:

(d) Section 129-286;

(e) Section 38-153;

(f) Section 6-47; and

(g) Section 6-110.

(Ord. No. 15-2002, § 250.30, 8-25-2002; Ord. No. 02-2008, 3-13-2008)

Chapter 38

LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

Sec. 38-1. Parade permit required.

The streets in the city shall be kept free and clear of all obstructions and encroachments, for the use of the public, and no parade, civic or military, with or without band of other music, and no public gathering or meeting of any kind for any purpose, and no beating of drum or drums, or playing of any instrument or instruments of any kind tending to the obstruction thereof, or gathering of crowds of people thereon, shall be permitted upon the public streets or public grounds of said city except with a written permit therefor being first obtained from the City Council. Such a permit shall be issued upon a showing that public safety will not be jeopardized by issuance of the permit. The fee for such permit shall be as established by the city.

(Ord. No. 01-2001, § 472.05, 2-25-2001)

Secs. 38-2—38-18. Reserved.

ARTICLE II. LICENSE AND PERMITS

Sec. 38-19. Required.

(a) *Applicability of article.* Except as otherwise provided in this Code, all licenses and permits granted by the city shall be governed by the provisions of this article.

(b) *Acts prohibited.* No person shall conduct any activity or use any property for which a license or permit is required by law or this Code without a currently valid license or permit for such activity or use.

(c) *Application; issuance.* Every applicant for a license shall submit an application to the clerk on a form provided by the city. It shall be accompanied by payment of the prescribed fee.

(1) *Criminal history background.* When applicable, the Police Department is authorized to do a criminal background investigation on applications for city licenses. Before the investigation is undertaken, the applicant must authorize the Police Department in writing to undertake the investigation and to release the information to the City Council, City Manager and other city staff as appropriate.

(2) *Issuance.* If, after investigation, the clerk is satisfied that all requirements of law and this Code have been met, the clerk shall present the application to the Council for action, or, if the license or permit does not require Council approve, the clerk shall issue the license or permit.

(3) *Denial for background.* Except in the case of exceptions set forth by state law, should the city deny the applicant's request for a license, due partially or solely to the applicant's prior conviction of a crime, the City Manager shall notify the applicant in writing of the following:

a. The grounds and reason for denial.

b. The applicant complaint and grievance procedure set forth in state statutes.

c. The earliest date the applicant may reapply for a license.

d. That all competent evidence of rehabilitation will be considered upon reapplication.

(d) *Bond.* Where a bond is required for any license or permit, the bond shall be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the clerk before the license or permit is issued. Unless otherwise determined by the city, a bond shall be in the amount of $5,000.00, conditioned that the licensee or permittee shall comply with the applicable ordinances and laws pertaining to the licensed or permitted activity and that the licensee or permittee will indemnify the city and save it harmless from all loss or damage by reason of inadequate work performed by him or by reason of accident caused by the negligence of the licensee or permittee, his agent or employees.

(e) *Insurance.*

(1) When a licensee or permittee is required to have in force a policy of insurance, the policy shall be approved as to substance and form by the City Attorney. The policy shall provide that it is noncancelable without 15 days' notice to the city, and the coverage shall be for the term of the license or permit. Satisfactory evidence of coverage by insurance shall be filed with the clerk before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage.

(2) Unless otherwise provided, a required policy of liability insurance shall provide for protection in at least the following amounts:

a. One million dollars per occurrence.

b. Two million dollars annual aggregate limit.

(Code 1987, § 400.01; Ord. 15-2002, 8-25-2002)

Sec. 38-20. Fees.

(a) *Fee established.* License fees are as established by the city.

(b) *Prorated fees.* License fees shall not be prorated unless otherwise specified by this Code or by law.

(c) *Refunds.* License fees shall not be refunded in whole or in part unless otherwise specified by this Code or by law.

(Code 1987, § 400.05; Ord. No. 01-2001, 2-25-2001)

Sec. 38-21. Duration.

Unless otherwise specified, a license shall be valid for 12 calendar months or the part of a year for which it is issued and shall expire on January 31.

(Code 1987, § 400.10)

Sec. 38-22. Transfers.

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

(Code 1987, § 400.15)

Sec. 38-23. Duplicate.

A duplicate license to replace a lost original may be issued by the Council at its discretion, under such regulations as it may prescribe, and on the payment of a fee as established by the city.

(Code 1987, § 400.20; Ord. No. 01-2001, 2-25-2001)

Sec. 38-24. Late applications.

Failure to secure initially, or to renew upon expiration, a license or permit or such as required shall be an offense constituting a misdemeanor, and each successive day shall constitute a separate and distinct offense.

(Code 1987, § 400.25)

Sec. 38-25. Inspection.

(a) *Authorized personnel.* Any city official or employee having a duty to perform with reference to a license under this Code and any police officer may inspect and examine any license, business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of subsection (b) of this section, he may, at any reasonable time, enter any licensed premises or premises for which a license is required in order to enforce compliance with this Code.

(b) *Search warrants.* If the licensee objects to the inspection of his premises, the city official or employee charged with the duty of enforcing the provisions of this Code shall procure a valid search warrant before conducting the inspection.

(Code 1987, § 400.30)

Sec. 38-26. Duties of licensee.

(a) *Compliance required.* Every licensee and permittee shall have the duties set forth in this section.

(b) *Inspection.* He shall permit at reasonable times inspections of his business and examination of his books and records by authorized officers or employees.

(c) *Compliance with law.* He shall comply with laws, ordinances, and regulations applicable to the licensed business, activity, or property.

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

(e) *Unlawful disposition.* The licensee shall not lend or give to any other person his license or license insignia.

(Code 1987, § 400.35)

Sec. 38-27. Suspension or revocation.

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

thereupon secure the license or permit and deliver it to the clerk. Failure of any holder of a license or permit to deliver the same to any police officer on demand after revocation, suspension, or termination shall be a misdemeanor.

(Code 1987, § 400.40)

Secs. 38-28—38-114. Reserved.

ARTICLE III. TRANSIENT MERCHANTS, HAWKERS, PEDDLERS AND SOLICITORS*

***State law reference—**Authority to regulate transient commerce, Minn. Stats. § 412.221, subd. 19; authority to regulate transient merchants, Minn. Stats. § 437.02.

DIVISION 1. GENERALLY

Sec. 38-115. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means a person who goes from house to house, door to door, business to business, street to street, or any other type of place to place for the purpose of offering for sale, selling or attempting to sell, and delivering goods immediately upon the sale of the goods, wares, products, merchandise, or other personal property that the person is carrying or transporting; the term does not include vendors of milk, bakery products or groceries who distribute their products to regular customers on established routes. The term "peddler" means the same as the term "hawker."

Person means any person, individual, co-partnership, limited liability company and corporation, both as principal and agent, who engage in, do, or transact any temporary and transient business in the city regulated by this section.

Solicitor means a person who goes from house to house, door to door, business to business, street to street, or any other type of place to place for the purpose of obtaining or attempting to obtain orders for the sale of goods, wares, or merchandise including magazines, books, periodicals, other personal property or services of which they may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as noted above. The term "solicitor" means the same as the term "canvasser."

Transient merchant means a person, whether as owner, agent, consignee, or employee who engages in a temporary business out of a vehicle, trailer, boxcar, tent, or other portable shelter, store front, or from a parking lot for the purpose of displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain or intend to remain in any one location for more than four consecutive days.

(Ord. No. 03-2008, § 485.01, 3-11-2008)

Sec. 38-116. Exemptions.

(a) *Applicability of article.* For the purpose of the requirements of this article, the terms "peddler," "solicitor," and "transient merchant" shall not apply to and shall not include the following:

(1) Sale of personal property at wholesale to dealers;

(2) The sale of papers or newspaper subscriptions;

(3) Calling upon residents in connection with a regular route service for the sale and delivery of perishable daily necessities of life such as food, bakery products and dairy products. This article shall also not apply to any person who makes initial contacts with people for the purpose of establishing or trying to establish a regular customer delivery route for sale and delivery of perishable daily necessities of life such as food, bakery products and dairy products;

(4) Calling upon residents at the request of said residents;

(5) A sale required by statute or by order of any court or prevent the conduct of a bona fide auction sale pursuant to law;

(6) Sales commonly known as garage sales, rummage sales, estate sales, as well as those persons participating in an organized, multiperson bazaar or flea market;

(7) A person issued an invitation by the owner or legal occupant of a residential premises shall be exempt from the definitions of peddlers, solicitors, and transient merchants.

Exemptions from this article shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

(b) *Nonprofit organizations and free expression.* Any organization, society, association, or corporation with a nonprofit status approved by the state or federal government desiring to solicit or to have solicited in its name money, donations of money or property, or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons other than members of such organizations for a charitable, religious, patriotic, or philanthropic purpose by going from house to house, door to door, business to business, street to street, or other type of place to place, or when such activity is for the purpose of exercising that person's state or federal constructional rights relating to the free exercise of religion or speech, is exempt from the licensing requirements of section 38-150, provided there is a registration filed in writing on a form to be provided by the City Clerk which contains the following information:

(1) Organization's name and specific cause for which exemption is sought;

(2) Names and addresses of the officers and directors of the organization;

(3) Period during which solicitation is to be conducted;

(4) Whether or not any commission, fee, wages or emoluments are to be expended in connection with such solicitation and the amount thereof; and

(5) Names and addresses of all persons involved in canvassing efforts.

Persons exercising constitutional rights may lose their exemption from licensing if the person's exercise of constitutional rights is merely incidental to a commercial activity. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of section 38-150.

(c) *Farm produce, horticultural, fireworks.* No license shall be required for any person to sell or attempt to sell or to take or attempt to take orders for any product grown, produced, cultivated, or raised on any farm. For the purposes of this article, the term "product"

means any horticultural product grown, produced or cultivated and/or sold by any person in this state. Persons exempt from this subsection shall register with the city as required in subsection (b) of this section. The sale of fireworks shall be regulated by chapter 38, article V. Notwithstanding any provision of chapter 129, pertaining to zoning, to the contrary, no conditional use permit or zoning approvals relating to accessory uses shall be required for sales regulated by this section.

(Ord. No. 03-2008, § 485.20, 3-11-2008)

Sec. 38-117. Prohibited activities.

(a) *Loud noises and speaking devices.* A person licensed under this article may not shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the streets, alleys, parks, or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, alleys, parks, or other places, for the purpose of attracting attention to any goods, wares, or merchandise which such license proposes to sell.

(b) *Use of streets.* A person licensed or regulated under this article does not have an exclusive right to any location in the public streets, nor is such person permitted a permanent stationary location thereon. A person licensed under this article may not operate in a congested area where such operation might impede or inconvenience the public use of streets.

(c) *Private property.* Issuance of a license under this article does not permit the license holder to conduct the licensed activity on private property without the ongoing permission of the property owner or the property owner's authorized agent. If such property is conspicuously posted by the owner or person in control with a sign stating, "No Trespassing," or "No Solicitors or Peddlers" or similar language, the entry thereon by any person subject to the licensing or registration requirements of this article without the permission of the owner or agent shall be a public nuisance punishable as a misdemeanor.

(d) *Practices prohibited.* No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

(1) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way;

(2) Creating a direct threat to the health, safety, or welfare of any individual or the general public;

(3) Entering upon any residential premises for the purpose of carrying on the licensee's or registrant's trade or business between the hours of 7:00 p.m. and 9:00 a.m. Monday through Saturday, and peddling or soliciting is prohibited on Sundays, unless such person has been expressly invited to do so by the property owner or occupant thereof;

(4) Harassing, intimidating, abusing, or threatening a person, continuing to offer merchandise for sale to any person after being told not to do so by that person, or failing or refusing to leave the premises of the resident occupant after being told to do so by the resident occupant.

(Ord. No. 03-2008, § 485.35, 3-11-2008)

Sec. 38-118. Records.

The Chief of Police must report to the City Clerk all convictions for violation of this article. The City Clerk must maintain a record for each license issued and record the reports of violations there. Any report of violation according to this section is grounds for revocation of the license.

(Ord. No. 03-2008, § 485.40, 3-11-2008)

Secs. 38-119—38-149. Reserved.

DIVISION. 2. LICENSE

Sec. 38-150. Required.

It is unlawful to engage in the business of peddler, solicitor, or transient merchant in the city without first obtaining a license therefor as provided by this article, unless exempt from such license pursuant to the requirements of section 38-116. In addition, no person shall conduct business as a transient merchant within the city limits without first having obtained the appropriate license from the county as required by Minn. Stats. ch. 329.

(Ord. No. 03-2008, § 485.05, 3-11-2008)

Sec. 38-151. Application.

(a) *Form.* Applications for a city license under this article must be filed in writing with the City Clerk on a form provided by the city.

(b) *Contents.* The application must contain the following:

(1) Applicant's full legal name and other names under which the applicant conducts business or to which the applicant officially answers;

(2) Physical description of the applicant (hair color, eye color, height, weight, distinguishing marks or features) or a copy of a current driver's license;

(3) Complete permanent home and local address of the applicant; and in the case of transient merchants, the local address from which proposed sales will be made with a letter of signed permission from the property owner;

(4) Applicant's phone number;

(5) A brief description of the nature of the business and the goods to be sold or services to be provided;

(6) The name, address and phone number of the employer, principal, or supplier of the applicant, together with credentials establishing the exact relationship;

(7) The dates during which the applicant intends to conduct business and the names of its agents conducting business in the city;

(8) The supply source of goods, or property prepared to be sold, or orders taken for the sale thereof, the location of such goods or products at the time of the application, and the proposed method of delivery;

(9) A recent photograph (approximately two inches by two inches) of the applicant, showing the head and shoulders of the applicant in a clear and distinguishing manner, to be used on the identification card prepared by the city;

(10) A statement as to whether or not the applicant has been convicted of any crime or violation of any municipal ordinance other than traffic violations, the nature of the offense, and the punishment or penalty assessed therefor;

(11) The names of up to three other municipalities where the applicant conducted similar business immediately preceding the date of the current

application and the addresses from which such business was conducted within those municipalities;

(12) The applicant's driver's license number or other acceptable state-issued identification;

(13) The license plate number and description of the vehicle to be used in conjunction with the licensed business, if applicable;

(14) Proof of county license (applicable to transient merchants only).

(Ord. No. 03-2008, § 485.10, 3-11-2008)

Sec. 38-152. Fee.

At the time of filing the application, the license fee as established by the city must be paid to the City Clerk.

(Ord. No. 03-2008, §§ 485.15, 485.45, 3-11-2008)

Sec. 38-153. Investigation and issuance.

The license application for nonexempt applicants must be referred to the Chief of Police or delegate who must immediately conduct a CCH investigation of the applicant as authorized by section 34-19 and a driver's license check, and promptly return the application to the City Clerk with a recommendation.

(Ord. No. 03-2008, § 485.25, 3-11-2008)

Sec. 38-154. License requirements.

(a) *Contents.* The license and identification badge must contain the signature of the issuing officer and show the name, address, and photograph of the licensee, the date of issuance and expiration, and the license number.

(b) *Duration.* Each license shall be valid only for the period specified therein, and no license may extend beyond December 31 of the year in which it was granted.

(c) *Nontransferable.* No license is transferable from one person to another. Each person involved in any activity regulated by this article shall be separately licensed even though associated with an organization licensed hereunder.

(d) *Identification.* Each licensee must wear the identification badge supplied by the city upon approval of the license, conspicuously showing his name and the organization for which he is working and must carry his city issued license when conducting the business or activity required to be licensed.

(Ord. No. 03-2008, § 485.30, 3-11-2008)

Secs. 38-155—38-176. Reserved.

ARTICLE IV. TREE REMOVAL AND TREATMENT CONTRACTORS

DIVISION 1. GENERALLY

Secs. 38-177—38-205. Reserved.

DIVISION 2. LICENSE

Sec. 38-206. Required.

If shall be unlawful for any individual, partnership, or corporation to conduct as a business the cutting, trimming, pruning, removal, spraying, or otherwise treating of trees, shrubs, or vines in the city without first having secured a license from the city to conduct such business.

(Code 1987, § 488.01)

Sec. 38-207. Application procedure; insurance requirements; certification; fees.

(a) *Location.* Application for a license under this article shall be made at the office of the City Clerk.

(b) *Form.* The application for a license shall be made on a form approved by the city which shows, among other things, the name and address of the applicant, the number and names of the employees of the applicant, the number of vehicles of applicant, together with a description and license number of each, and the type of equipment proposed to be used.

(c) *Liability insurance.* No license or renewal shall be granted, nor shall the same be effective, until the applicant shall file with the City Clerk proof of a public liability insurance policy covering all operations of such applicant under this article for the sum of at least $1,000,000.00 per occurrence with an annual aggregate limit of $2,000,000.00. The city shall be named and the insurance provided shall include the city as an additional party insured. Said policy shall provide that it may not be cancelled by the insurer except after 15 days' written notice to the city, and if such insurance is so cancelled and the licensee shall fail to replace the same with another policy conforming to the provisions of this article, said license shall be automatically suspended until such insurance shall have been replaced.

(d) *Workers' compensation insurance.* Each license applicant shall file with the City Clerk a certificate of insurance for workers' compensation when such insurance is required by state statute.

(e) *Chemical treatment requirements.* Applicants who propose to use chemical substances in any activity related to the treatment or disease control of trees, shrubs, or vines shall file with the City Clerk proof that the applicant or an employee of the applicant administering such treatment has been certified by the Agronomy Division of the Minnesota Department of Agriculture as a commercial pesticide applicator. Such certification shall include knowledge of tree disease chemical treatment.

(f) *Fees.* The annual license fee shall be as established by the city, with the license year being from April 1 to March 31 of the following year.

(Code 1987, § 488.05; Ord. No. 01-2001, 2-25-2001)

Secs. 38-208—38-230. Reserved.

ARTICLE V. FIREWORKS

DIVISION 1. GENERALLY

Sec. 38-231. Purpose.

The purpose of this article is to regulate the sale of permitted consumer fireworks as described in Minn. Stats. § 624.20, in order to protect the health, safety and welfare of the general public.

(Ord. No. 04-2008, § 906.05, 3-25-2008)

Secs. 38-232—38-250. Reserved.

DIVISION 2. LICENSE

Sec. 38-251. Sale of fireworks.

It is unlawful to sell fireworks in the city in violation of Minn. Stats. §§ 624.20—624.25, inclusive, which are adopted by reference. The term "consumer fireworks" as defined in this article may, however, be sold upon issuance of a license by the city.

(Ord. No. 04-2008, § 906.10, 3-25-2008)

Sec. 38-252. Application.

(a) Each applicant shall file a written and signed application, on a form prepared by the city. Such application shall describe the specific location where, the days when, and the hours during which the applicant intends to offer for sale, expose for sale, or sell at retail any consumer fireworks, and such other pertinent information as the city may deem necessary to enable it to carry out the provisions of this article. No license shall be issued unless the application has been approved by the planning department as meeting the city's zoning regulations, by the Fire Department as meeting the requirements of National Fire Protection Association Standard 1124 (2003 edition), and by the Police Department as meeting the requirements of any other state or local laws.

(b) The application shall contain and the applicant shall provide, at a minimum, the following information:

(1) Applicant's name, address, phone number, and date of birth;

(2) The address and phone number of the sale site;

(3) The dates of actual sale of consumer fireworks;

(4) The type and quantity, in pounds, of the specific type of fireworks to be at the sale site;

(5) A statement that applicant understands what constitutes consumer fireworks and what are illegal under state law.

(c) The applicant shall file with the application, evidence that the applicant has liability insurance coverage in an amount of $1,000,000.00 per occurrence and $2,000,000.00 as an annual aggregate limit to cover the licensee's negligent acts relative to the sale, possession or use of consumer fireworks. Such insurance shall indicate that the city shall receive notice at least 30 days prior to the cancellation or termination of the coverage. Any license issued under the authority of this article shall immediately terminate upon the cancellation or termination of the insurance coverage required herein.

(Ord. No. 04-2008, § 906.20, 3-25-2008)

Sec. 38-253. Processing application.

The application must be filed with the City Clerk together with the permit and inspection fees. Following an inspection of the premises proposed to be licensed, the city shall issue the permit if the conditions for the license approval are satisfied and the location is properly zoned. If the city denies the permit application, the permit applicant may, within ten days, appeal the decision to the City Council.

(Ord. No. 04-2008, § 906.25, 3-25-2008)

Sec. 38-254. Issuance.

The city shall grant a consumer fireworks license to an applicant who complies with the provisions of this article and provides a completed application, license and inspection fees as specified by the city, approved inspection report by the fire marshal, and proof of insurance. A license is an annual license, which shall expire on December 31 of the year of issuance. The license fee shall not be prorated.

(Ord. No. 04-2008, § 906.30, 3-25-2008)

Sec. 38-255. Conditions.

A license to sell consumer fireworks shall be issued subject to the following conditions:

(1) The license is nontransferable, either to a different person or location.

(2) The license must be publicly displayed at the licensed premises.

(3) The premises are subject to inspection by the city Police and Fire Departments at any time when the licensee is engaged in selling or displaying fireworks for sale, to inspect the premises to determine compliance with this article. The licensee must discontinue selling or displaying fireworks for sale until compliance with all provisions of this article, the city fire prevention code, and any other state or federal regulations are met.

(4) No signs, banners, pennants, or any other form of advertising shall be displayed unless in compliance with chapter 119, pertaining to signs. All permits required by chapter 119, pertaining to signs, shall be obtained.

(5) Storage and display for sale of consumer fireworks on the premises must be in compliance with the National Fire Protection Association Standard 1124, 2003 edition, which is incorporated herein by reference.

(6) No person shall sell consumer fireworks to a person younger than 18 years of age. Licensee and licensee's employees selling fireworks must be at least 18 years of age. Vendors of legal fireworks must verify the age of the purchaser by the use of photographic identification.

(Ord. No. 04-2008, § 906.35, 3-25-2008; Ord. No. 06-2008, 5-24-2008)

Sec. 38-256. Revocation.

Following written notice and an opportunity for a hearing, the City Manager may revoke a license for violation of this article or state statute concerning the sale, use or possession of fireworks. If a license is revoked, neither the applicant nor the licensed premises may obtain a license for 12 months.

(Ord. No. 04-2008, § 906.40, 3-25-2008)

ARTICLE VI. SECONDHAND GOODS DEALERS

DIVISION 1. GENERALLY

Sec. 38-301. Purpose.

The purpose of this article is to regulate the sale of certain secondhand goods to protect the health, safety and welfare of the general public. The City Council finds that some secondhand goods dealers potentially provide an opportunity for the concealment of crimes because such businesses have the ability to receive and transfer stolen property easily and quickly. The purpose of this section therefore is to prevent these businesses from being used as facilities for the commission of crimes and assure that such businesses comply with basic consumer protection standards.

Sec. 38-302. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Electronic equipment means televisions, radios, stereos, audio or video players and recorders, digital cameras, camcorders and like equipment but excluding musical instruments and their related amplification equipment.

Jewelry means objects of precious metals often set with precious stones but excluding costume jewelry. The term includes all watches.

Power tools means any device, either portable or stationary, equipped with an engine, motor, battery or other means of operation, including machine, carpentry and industrial tools or surveying equipment.

Precious metals and gems means gold, silver, platinum, sterling silver, precious gems, and coins with a numismatic value or intrinsic value greater than its denominational value, whether as a separate item or in combination as a piece of jewelry or other crafted item. This term does not include items plated with precious metal or metals when the plating equals less than one percent (1%) of the item's total weight.

Secondhand good means tangible personal property (excluding motor vehicles) previously owned, used, rented, or leased by a person other than the dealer offering it for sale.

Secondhand goods dealer means a person whose regular business includes the purchasing and selling or secondhand goods at their licensed place of business. A secondhand goods dealer does not include a person engaged in pawn transactions.

Unique Identifier means a serial number, identification number, model number, owner applied identifier or engraving, "operation ID" number or symbol, or other unique marking.

Sec 38-303. Exemptions.

This section does not apply to or include the following:

(a) The sale of secondhand goods where the sale is held on property principally occupied as a dwelling by the seller as long as the sale does not exceed a period of 72 hours and not more than three sales are held by the same person or on the same property in

any 12 month period. None of the items offered for sale can have been purchased for resale or received on consignment for the purpose of resale. :

(b) The sale of secondhand goods on property owned, renter or licensed by a charitable or political organization as long as all of the secondhand goods have been donated.

(c) Secondhand goods dealers that do not receive or sell any of the following:
  (1) Items with a serial number or other unique identifier;
  (2) Electronic equipment, including but not limited to audio equipment, video equipment, computers and computer related equipment;
  (3) Precious jewelry, metals or gems;
  (4) Power tools; and
  (5) Firearms.

(d) Sales by a person licensed as a motor vehicle dealer.

(e) The sales of goods at an auction held by a licensed auctioneer.

DIVISION 2. LICENSE

Sec 38-331. License Required.

(a) *Acts Prohibited.* No person may engage in the business of secondhand goods dealer without first obtaining a secondhand goods dealer license.

(b) *Persons Ineligible for License*. A secondhand goods dealer license will not be issued to:
  (1) A person who has been convicted of any state or federal law relating to receiving stolen property, sale of stolen property or controlled substance, burglary, robbery, theft, damage or trespass to property, operation of a business, or any law or ordinance regulating the business of pawnbroker or secondhand goods dealer;
  (2) A person who within three years of the license application date had a pawnbroker or secondhand goods dealer license revoked;
  (3) A secondhand goods dealer license will not be issued to any partnership or corporation if such applicant had a partner, managing partner, proprietor or agent who does not meet the standard set forth in (2) or (3) above.

(c) *Changes in Ownership.* Any change in the ownership of any licensed secondhand goods store shall require the application for a new license and the new owner must satisfy all current eligibility requirements.

(d) *Changes in Location.* A license will be issue to the applicant only for the business premises as described in the application. Should the applicant seek to move the business, the license shall not be changed to another location without approval of the Council.

(e) *Duration.* A secondhand goods dealer license shall be valid for 12 months or the part of the year for which it is issued and shall expire on January 31st following the year of issuance.

Sec 38-332. Application

(a) *Contents.* Every applicant for a license shall submit an application to the clerk on a form provided by the City. The application will not be considered unless it is accompanied by payment of the prescribed fee.

(b) *Criminal history background.* The City, prior to the granting of an initial or renewed secondhand goods dealer license, must conduct a criminal background investigation of the applicant. Any person having a beneficial interest in the license must be investigated. The investigation shall be conducted by the Police Department. Before the investigation is undertaken, the applicant must authorize the Police Department in writing to undertake the investigation and to release the information to the City Council, City Manager and other City staff as appropriate. The fee for the criminal history background check shall be established by the City and shall so be stated in the City's fee schedule. If the Police Department and City Manager determine that a renewal secondhand goods dealer license applicant has fully complied with all requirements of Article VI of this Chapter during the prior 12 months, the City Manager may waive the criminal background investigation requirement and associated fee for that application.

(Code 1987, § 488.05; Ord. No. 12-2014, 12-21-2014)

Sec 38-333. Issuance

(a) *Application Review*. If, after investigation, the City Clerk is satisfied that all requirements of law and this Code have been met, the City Clerk shall issue said license. If the application is incomplete, the City Clerk shall notify the applicant in writing to inform them of the deficient or missing information.

(b) *Denial.* Any license under this chapter may be denied for one or more of the following reasons:
   (1) The applicant(s) is ineligible for a license or has failed to comply with one or more provisions of this chapter.
   (2) The applicant has committed fraud or bribery, or made misrepresentations or false statements in the application, investigation or operation of the second hand good business.
   (3) The premises do not comply with any health, building, building maintenance or other provisions of this code or state law.

(c) *Notice of Denial.* Should the city deny the applicant's request for a license, the applicant shall be notified in writing of the following:
   (1) The grounds and reason for denial.
   (2) The applicant complaint and grievance procedure set forth in state statutes.
   (3) If the denial is based upon a criminal conviction that all competent evidence of rehabilitation will be considered upon reapplication.
   (4) That the application fee is not refundable.

(d) *Liability insurance.* No license or renewal shall be granted, nor shall the same be

effective, until the applicant shall file with the City Clerk proof of a public liability insurance policy covering all operations of such applicant under this article for the sum of at least $1,000,000.00 per occurrence with an annual aggregate limit of $2,000,000.00. The city shall be named and the insurance provided shall include the city as an additional party insured. Said policy shall provide that it may not be cancelled by the insurer except after 15 days' written notice to the city, and if such insurance is so cancelled and the licensee shall fail to replace the same with another policy conforming to the provisions of this article, said license shall be automatically suspended until such insurance shall have been replaced.

Sec 38-334. Fees

(a) Fee established. License fees are as established by the city.

(b) Prorated fees. License fees shall not be prorated.

(c) Refunds. License fees shall not be refunded in whole or in part.

Sec. 38-335. Inspection.

(a) *Authorized personnel.* Any city official or employee having a duty to perform with reference to a license under this Code and any police officer may inspect and examine any license, business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of subsection (b) of this section, the licensee may, at any reasonable time, enter any licensed premises or premises for which a license is required in order to enforce compliance with this Code.

(b) *Search warrants.* If the licensee objects to the inspection of their premises, the city official or employee charged with the duty of enforcing the provisions of this Code shall procure a valid search warrant before conducting the inspection.

Sec. 38-336. Duties of licensee.

(a) *Compliance Required.* Every licensee shall have the duties set forth in this section.

(b) *Compliance with Law*. The licensee shall comply with laws, ordinances, and regulations applicable to the licensed business, activity, or property.

(c) *Display of License*. The licensee shall prominently display the license in a conspicuous place on the premises at all times

(d) *Unlawful Disposition*. The licensee shall not lend or give to any other person his license.

(e) *Records.* A licensed secondhand goods dealer at the time of the receipt of an item, must immediately record descriptive information about the transaction. The records as well as the goods received must be open for inspection by the police department at reasonable times. Records required by this subsection must be stored and maintained by the licensee for a period of at least three years. For each transaction, the following information shall be noted in either a computerized record or kept in a journal used for this purpose using indelible ink:

(1) Date, time and place of receipt

(2) An accurate description of the item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such item
(3) The purchase price
(4) Name, address, phone number, and date of birth of the person from whom the item was purchased
(5) The identification number from any of the following forms of identification of the seller – valid picture driver's license or official state picture identification
(6) An original signature (not a copy) of the person from whom the item was received.

(f) *Prohibited Acts*. A licensed secondhand goods dealer must not purchase goods from the following individuals:
(1) A person under the age of 18 years.
(2) An intoxicated person
(3) A person who is unwilling to present an acceptable form of picture identification or supply any of the other required information referenced in (e) above.

(g) *Prohibited Goods*. A licensed secondhand goods dealer shall not accept any item of property which contains an altered or obliterated serial number, "an altered or obliterated "operation identification" number or any item of property whose serial number has been removed.

(h) *Stolen or Lost Goods*. A licensed secondhand goods dealer must report to the police any article received, or sought to be received if the licensee has reason to believe that the article was stolen or lost.

(i) *Police Orders*. The licensee shall comply with all lawful orders of any law enforcement agency.

Sec. 38-337. Suspension or Revocation.

The Council may suspend for a period not exceeding 60 days or revoke any license for violation of any provision of law, ordinance, or regulation applicable to the license or property. The holder of the license shall be granted a hearing upon at least ten days' notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

(Ord. No. 06-2011, 1-1-12)

Chapter 42

NUISANCES*

***State law reference—**Authority to define, prevent and abate nuisances, Minn. Stats. § 412.221, subd. 23.

Sec. 42-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) Public nuisance. A person or property owner that does any of the following is guilty of maintaining a public nuisance:

(1) Maintaining or permitting a condition which unreasonably annoys, injures, or endangers the safety, health, comfort, or repose of any considerable number of persons;

(2) Unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for use or passage, a body of water or a public park, public right-of-way, street, highway, or other public property within this city;

(3) Depreciate the value of the property of a considerable number of the inhabitants of this city or cause a blighted and undesirable neighborhood; or

(4) Any other act or omission declared by law, this chapter, or as determined by the City Council to be a public nuisance.

(b) Prohibited conduct. No person shall create, commit, or maintain a public nuisance, or let the property to another knowing it is to be used so.

(Code 1987, § 1000.01, Ord. No. 02-2017, 2-5-2017)

Sec. 42-2. Public nuisances—Affecting health.

The following are hereby declared to be public nuisances affecting health:

(1) Carcasses of animals, birds or fish not buried or destroyed within 24 hours after death;

(2) The keeping of any animal over six months of age which has not been vaccinated against rabies with an approved vaccine as determined by the official Comprehendium of Animal Rabies Vaccines published by the Conference of State Public Health Veterinarians and the Center for Disease Control of the Department of Health and Human Services;

(3) All public exposure of persons having a communicable disease as defined in Minn. Stats. § 144.4172 and any building, conveyance, or place where contagion, infection, filth or other source or cause of communicable disease exists;

(4) Accumulations of stagnant water, manure, or rubbish which are likely to become breeding places for flies, mosquitoes or vermin;

(5) Depositing manure, pet feces, human feces, leaves, grass, clippings, solvents, antifreeze, oil, garbage or refuse upon adjacent private property or onto any city street, city sidewalk, public property, storm sewer system, or water resource such as a wetland, pond, or lake; or

(6) All other acts, omission of acts, and uses of property deemed by the state, board of health, Hennepin County Human Service and Public Health Department, or the health inspector to be a menace to the health of the inhabitants of this city.

(Code 1987, § 1000.05A; Ord. No. 02-2017, 2-5-2017)

Sec. 42-3. Same—Affecting morals and decency.

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

(1) All gambling devices, slot machines and punch boards, unless approved as a legal device by the state;

(2) Betting, bookmaking, and all apparatus used in such occupations;

(3) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;

(4) All places where controlled substances, narcotics, or intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, persons are permitted to resort for the purpose of drinking intoxicating liquor or use of controlled substances or narcotics, or where intoxicating liquor, controlled substances, or narcotics are kept for sale or other disposition in violation of law, and all liquor controlled substances, and narcotics and other property used for maintaining such a place;

(5) Any vehicle used for the transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose;

(6) The use of any fish house, warming house, or other similar structure for any activity listed in subsections (1) through (4) of this section.

(Code 1987, § 1000.10A)

Sec. 42-4. Same—Affecting peace and safety.

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

(1) All snow and ice not removed from public sidewalks 12 hours after the snow or other precipitation causing the condition has ceased to fall;

(2) All limbs or branches of trees not in the right-of-way which are less than 15 feet above the surface of any street and all limbs or branches of trees which are less than eight (8) feet above the surface of a sidewalk, bike path, or trail;

(3) All shrubs, hedges, bushes, or trees of any height placed within the sight triangle, which obstructs the vision of persons on any street or sidewalk;

(4) Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks, or public grounds except under such conditions as are permitted by this chapter or other applicable law;

(5) All wires strung less than 15 feet above the surface of the ground, radio aerials, radio towers, television antennas, television towers, or satellite dishes erected, or maintained in an unsafe or dangerous manner;

(6) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to

gather, obstructing traffic and the free uses of the streets or sidewalks;

(7) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated so as to endanger public safety or not constructed and maintained as provided by this code;

(8) The allowing of rain water, ice, or snow to fall from any building or structure or wastewater cast upon or permitted to flow upon or across any street, sidewalk, or other public property;

(9) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies, or other materials;

(10) Noxious weeds, as that term is defined in Minn. Stat. § 18.77, any excessive or un-controlled growth of other weeds, and un-mowed turf-grass exceeding eight (8) inches in height. Establishment and minimal maintenance of native and naturally-occurring woodland, prairie, wetland, and riparian grasses, wildflowers, and pollinator attractant areas within lots is permissible on unimproved lots in whole or on portions of improved lots, subject to control of noxious and invasive weeds;

(11) All abandoned, junked, or unauthorized vehicles as those terms are defined in Minn. Stat. § 168B.011, which are stored in the open on any private property, street, alley, or other public property;

(12) All dead or diseased standing trees on improved lots; or those on unimproved lands which present an immediate and direct hazard to life or property; all cut wood that is diseased or found harboring any invasive species. Live trees standing with storm or disease damage or otherwise structurally unsound may be identified as a nuisance requiring assessment and treatment by a certified arborist and/or removal;

(13) All accumulated piles of wood, which are not neatly stacked or stacked and secured in a stable manner to avoid collapse;

(14) All dangerous, unguarded machinery, including derelict autos, derelict boats, derelict appliances, or other similar equipment, in any public place, or so situated or operated on private property so as to attract the public.

(15) Jumping, diving, or fishing from a channel bridge, street bridge, or railroad bridge;

(16) All discarded or unused refrigerators, freezers, or other similar object or container sufficiently large to retain any person, exposed in the open on private property or in such condition as to be accessible to the public, without first removing the doors, lids, hinges, or latches, or providing locks to prevent the opening of the object by the public;

(17) Causing to be made any fire on any public beach area, park, or other public property, except in fireplaces designated for that purpose;

(18) Any well, hole, obstruction, or excavation which is left uncovered or in such other condition as to constitute a hazard to any child or other person being or coming on the premises where it is located, except under such conditions as are specifically provided by this code;

(19) Obstruction to the free flow of water in a natural waterway or public street drain, gutter, or ditch with trash, rubbish, vegetation, or other

materials;

(20) The placing or throwing on any street, sidewalk, or other public property of any glass, tacks, nails, bottles, or other substance which may injure any person or animal, or damage any tire when passing over such substance;

(21) All buildings, walls, fences, and other structures which have been damaged by fire, decay, or otherwise, and which are so situated as to endanger the safety of the public;

(22) All structures or portions of a structure, located in a residential zoning district, if the exterior is not completed in accordance with the city-approved construction plans within 180 days after the date that the city building permit was issued;

(23) Property that has been disturbed by construction, grading, or other activity and is not seeded, sodded, or otherwise planted with ground cover within 240 days after the date the city building permit was issued, unless the 240 days expires between November 1 and May 15, in which case the ground cover must be established by the following July 15;

(24) Construction materials, including piles of dirt, sand, sod, and other debris that is not placed in an adequate waste container, permitted to blow around or off the premises, or left in the open on property more than 21-days after being generated, unless such materials are being used at the time in the construction of a building, in which case, such materials must be removed within 60 days following the completion of construction or a certificate of occupancy has been issued, whichever comes first; or;

(25) Private functions or special events that exceed normal levels of city public services, overwhelm city resources, are outside the realm of municipal permits, exceed the provisions set forth in issued or existing permits, or require special service from city departments and/or mutual-aid agreements;

(Ord. No. 02-2017, 2-5-2017)

Sec. 42-5. Duties of city officers.

(a) *Enforcement authority.* The Police and Community Development Departments shall enforce the provisions relating to nuisances.

(b) *Right of entry.* If it is necessary to make an inspection to enforce the code or if the Department staff has reasonable cause to believe that there exists upon a property a condition contrary to or in violation of the code, the Department staff may enter the property at reasonable times to inspect or to perform the duties imposed by the code, provided that if the property is occupied, credentials must be presented to the occupant and entry requested. If the property is unoccupied, the Department staff shall first make a reasonable effort to locate the owner or other person having charge or control of the property and request entry. If entry is refused or the nuisance condition creates an emergency situation of imminent danger to human life or safety, the Department staff shall have recourse to the remedies provided by law to secure entry.

(c) *Order to cease.* In the event that Department staff observes a person creating a nuisance, the staff may, after presenting proper identification, order that the person cease creating or maintaining a nuisance.

(Ord. No. 02-2017, 2-5-2017)

Sec. 42-6. Abatement.

(a) Authority to Abate. A person in violation of sections 42-2 and 42-4 shall be deemed to have created a public health hazard, or public nuisance affecting peace and safety in the city, which is subject to abatement by city staff members. All abatement costs incurred including administrative, legal, and engineering fees shall be charged against the property as a special assessment to be assessed and collected in the manner provided in .Minn. Stat. § 429.101 as may be amended from time to time or in any alternative manner provided elsewhere in Minnesota Statutes.

(1) Abatement may include, but shall not be limited to removal, cleaning, extermination, cutting, mowing, grading, covering or filling dangerous unfinished or abandoned excavations, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures and demolition of dangerous structures or abandoned buildings.

(2) Abatement costs shall include, but not limited to the cost of the abatement, the cost of investigation, such as title searches, inspection, and testing, the cost of notification, filing costs, and administrative costs.

(b) *Service.* When service of an order or notice is required, any one or more of the following methods of service shall be adequate:

(1) By mail to the property owner, property tenant, or responsible party as identified through property tax records, unless it is a written order which gives days or three (3) less for the completion of any act it requires;

(2) By posting on the property, if the written order or notice gives three (3) days or less for the completion of any act it requires; or

(3) If the appropriate party or address cannot be determined after reasonable effort or it is a written order which gives three (3) days or less for the completion of any act it requires, by posting a copy of the order or notice in a conspicuous place on the property. If a mailed order or notice is returned by the United States Postal Service, a good faith effort shall be made to determine the correct address, unless the order or notice orders abatement and that abatement has been completed.

(Code 1987, § 1000.25; Ord. No. 11-2005, 8-7-2005; Ord. No. 08-2007, 8-28-2007; Ord. No. 04-2010, 7-4-11; Ord. No. 03-2015, 11-22-2015; Ord. No. 2-2017, 2-5-2017)

Sec. 42-7. Abatement procedures.

(1) Standard abatement. Except for the abatement of noxious weeds governed by section 42-4 subdivision 10 and except as otherwise provided under subdivisions 2, 3, and 4 below, the following abatement procedures applies to all public nuisances. Whenever the officer who is charged with enforcement determines

that a public nuisance is being maintained or exists on a property, the officer must give written notification to the property owner, occupant, or other responsible party of that fact and order that the nuisance be terminated and abated. Notice must be served in the manner provided in section 42-6 (b) of this chapter. The written order or notice shall contain the following:

(a) The location or description of the real estate sufficient for identification of the location of the public nuisance;

(b) The nature of the public nuisance, with reference to the appropriate code provision;

(c) The steps to be taken to abate the nuisance and an abatement deadline, of ten (10) calendar days within which the nuisance is to be corrected;

(d) That if the owner, occupant, or other responsible party does not comply with the notice or order within the time specified, the City may provide for abating the nuisance;

(e) That the owner, occupant, or other responsible party has the right to appeal the designation of a public nuisance before the City Council, by submitting a request in writing to the City Clerk, within seven (7) calendar days after service of the notice or order; and

(f) That the City may assess its abatement costs against the property in accordance with this section.

If no timely appeal is submitted and the nuisance is not corrected within the deadline given, the enforcement officer may proceed to abate the nuisance. If a timely appeal is submitted, the matter must be scheduled for a hearing before the City Council. A notice of the hearing must state the date, time, and location of the City Council hearing, must be served in the same manner as the violation notice, and must be given at least ten (10) days before the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

1. *Summary abatement.* The enforcing officer may provide for abating a public nuisance regardless of cost, without following the standard abatement procedures required in paragraph 1 above when:

(a) There is an immediate threat to the public health or safety;

(b) There is an immediate threat of serious property damage; or

(c) A public nuisance has been caused by private parties on public property.

Following a summary abatement, as soon as the costs incurred are known, the enforcement officer shall serve written notice upon the property owner, occupant, or responsible party. The notice shall contain:

(a) A description of the nuisance;

(b) The action taken by the City;

(c) The reasons for summary abatement;

(d) The costs incurred in abating the nuisance; and

(e) A statement that the property owner, occupant, or responsible party may request, by writing to the City Clerk within two (2) business days of the date of the notice, a hearing at which the City Council shall review the actions taken by the enforcement officer.

3. *Major abatement.* When the enforcement officer determines that the cost of abating a nuisance will exceed $5,000 based on a reasonable, good faith estimate, the standard abatement procedure provided in paragraph 1 is altered in the following manner:

   (a) The abatement notice or order must provide that if the party does not abate the nuisance within ten (10) calendar days, the matter will be referred to the City Council for review and possible action;

   (b) The abatement notice or order must specify the date, time, and location of the City Council review; and

   (c) The abatement notice or order shall be sent by First Class U.S. Mail to the property owner, occupant, or responsible party, as identified through property tax records.

4. *Noxious weeds abatement*. For a noxious weed violation under section 42-4 (10), the standard abatement procedure provided in paragraph 1 is altered in the following manner:

   (a) The abatement notice or order shall remain in effect for the remainder of the calendar year; and

   (b) No further notice or order shall be required for abating a recurrence of the same condition.

5. *Cost recovery*. The owner of property on which a nuisance has been abated by the City or a person who has caused a public nuisance on property not owned by that person, is personally liable to the City for the cost of the abatement, including administrative costs. Unpaid charges constitute a special assessment against the property where the abatement occurred on and after the date they were incurred. As soon as the work has been completed and the cost determined, an appropriate official will prepare a bill for the cost and mail it by First Class U.S. Mail to the property owner or other responsible party. The amount shall be immediately due and payable to the City Clerk.

6. *Assessment*. If the cost, or any portion of it, has not been paid under subdivision 5 within 30 days after the date of the bill, the City Council may certify the unpaid cost against the property to which the cost is attributable as a special assessment, as provided in Minn. Stats. §429.101. Before certification against the property, reasonable notice of the impending certification and an opportunity to be heard by the City Council must be given to the taxpayer of record. Failure of the taxpayer to receive the notice shall not invalidate the certification. The City Council may certify unpaid costs to the county auditor for collection along with current taxes in the following year or in annual installments not exceeding five (5), with interest as determined by the City Council in each case.

(Ord. No. 2-2017, 2-5-2017)

Chapter 46

OFFENSES AND MISCELLANEOUS PROVISIONS*

***State law reference—**General police power of city, Minn. Stats. § 412.221, subd. 32.

ARTICLE I. IN GENERAL

Secs. 46-1—46-18. Reserved.

ARTICLE II. OFFENSES INVOLVING PROPERTY RIGHTS

Sec. 46-19. Removing barricades.

No person shall remove, throw down, run over or interfere with any barricade lawfully erected, placed to guard and protect any grading, paving, excavation, sidewalk construction, or other work.

(Code 1987, § 930.01)

Sec. 46-20. Molesting unfinished paving.

No person shall walk upon, drive, or ride over or across any pavement in the course of construction or any uncompleted grading or sidewalk construction which has not been opened for travel.

(Code 1987, § 930.05)

Secs. 46-21—46-43. Reserved.

ARTICLE III. OFFENSES INVOLVING PUBLIC SAFETY

DIVISION 1. GENERALLY

Sec. 46-44. Discharge of fireworks.

(a) The use, display, possession, discharge or sale or any fireworks not expressly permitted by Minn. Stats. § 624.20, subd. 1(c) is strictly prohibited.

(b) All use, display or discharge of those non-explosive, non-aerial pyrotechnic entertainment devices only containing the limited amounts of pyrotechnic chemical compositions described in and permitted by Minn. Stats. § 624.20, subd. 1(c), hereinafter permitted consumer fireworks, is strictly prohibited in the area on, below, above or within:

(1) Recreational areas, roadways, streets, highways, bicycle lanes, pedestrian paths, sidewalks, rights-of-way, lakes, rivers, waterways and all other property owned or leased by the city, county, state or federal government and located in whole or in part within the city limits.

(2) Private property within the city limits that has conspicuously posted a written sign or notice that no fireworks discharge is allowed.

(3) Within 300 feet of any consumer fireworks retail sales facility or storage area that has properly posted a written sign or notice that no fireworks discharge is allowed.

(4) Any property, area, structure or material that by its physical condition or the physical conditions in which it is set would constitute a fire or personal safety hazard.

(c) All other use, display or discharge of permitted consumer fireworks must be conducted in a manner that minimizes the risk of injury to other persons or property.

(Code 1987, § 905.25; Ord No. 08-2002, 6-23-2002)

Sec. 46-45. Hunting and trapping prohibited.

(a) No person shall, within the city, take, capture, shoot, or trap any animals or birds except as follows:

(1) Persons duly authorized to act as law enforcement officers in the discharge of their duties.

(2) For the destruction of diseased, injured, or dangerous birds, animals, or reptiles by persons specifically authorized to do so by the Chief of Police or the City Council.

(3) Persons authorized by the City Council for the purpose of protecting the health, safety, or general welfare.

(4) Persons who have obtained a trapping license from the department of natural resources and who trap using a live trap.

(5) Commercial trappers who have obtained a proper trapping license from the state department of natural resources.

(b) The Council may limit the type of animal or bird to be trapped, captured, or shot and the manner and means of accomplishing the task.

(Code 1987, § 905.30; Ord. No. 03-2004, 7-4-2004)

Sec. 46-46. Setting fires.

No person shall set on fire or cause to be set on fire any combustible material whereby the property of another shall be endangered, nor shall any person suffer any fire upon his own land to extend beyond the limits thereof.

(Code 1987, § 920.01)

Secs. 46-47—46-65. Reserved.

DIVISION 2. WEAPONS

Sec. 46-66. Weapons.

(a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Deadly weapons means and shall include the following:

(1) All firearms;

(2) Bows and arrows when the arrows are pointed tipped;

(3) All instruments used to expel at high velocity any pellets of any kind, including, but not limited to, BB guns and air rifles;

(4) Sling shots;

(5) Sand clubs;

(6) Metal knuckles;

(7) Daggers, dirks, stilettos, switch blade knife, spring blade knife, push

button knife, or figures or discs sharpened with points or edges (commonly known as throwing stars); and

(8) Dynamite.

The provisions of this section do not apply to firearms or ammunition or their respective components to the extent that that the provisions of this section impose restrictions or prohibitions other than restrictions or prohibitions on the discharge of firearms.

(b) *Prohibition.* Except as herein specifically authorized, all discharging and use of deadly weapons within the corporate limits of the city are hereby prohibited.

(c) *Aiming prohibited.* The aiming of any deadly weapon, whether loaded or not, at or toward any human being is hereby prohibited.

(d) *Minors.* The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardians, or of a police officer or magistrate, is hereby prohibited.

(e) *Minors, possession.* No minor shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any deadly weapon.

(f) *Possession of knives on school grounds.* It shall be unlawful for any person to be in possession of, carry, transport or control any knife in any school building, on the grounds of any school building, in any school parking area or on public streets or sidewalks adjacent thereto except where such knives are used in or as a part of any instructional activity carried on in the school, used in the preparation or consumption of food in any lunchroom, cafeteria, snack bar, or other place where food is customarily prepared or served, or when used as a tool by a person authorized to perform construction, repair or maintenance services on school property.

(g) *Concealed.* The possession by any person other than a public officer, as defined in section 46-67, and any deadly weapon concealed or furtively carried on the person is hereby prohibited.

(h) *Defense.* Nothing in this division shall be construed to include any firing of a gun or use of other weapons when done in the lawful defense of persons or property or family, or the necessary enforcement of the law.

(i) *Permits.* Subject to reasonable regulation by the Police Chief for the protection of persons and property, the Police Chief may issue special permits to duly organized clubs and their members for shooting or practicing on lands owned or leased by the club or trap shooters shooting on grounds selected for that purpose, or to persons firing salutes over the graves of deceased persons.

(Code 1987, § 905.01)

State law reference—Local regulation of firearms, Minn. Stats. § 471.633.

Sec. 46-67. Exceptions.

(a) The provisions of this division shall not apply to any police or peace officer, sheriff, or any officer of the United States, the state, or of its counties who may carry, use, or discharge a firearm or gun in the city in the course and scope of their duties.

(b) The provisions of this division shall not apply to representatives of the city, county, or state or any person permitted by them, who in the course of their duties or pursuant to a permit, may use a firearm or gun to restrain the free movement of any animal, wildlife, or birds for humane or other authorized purposes.

(Code 1987, § 905.05)

DIVISION 3. PREDATORY OFFENDER RESIDENCY RESTRICTIONS

Sec. 46-68. Findings and Intent.

It is the intent of this chapter to serve the city's compelling interest to promote, protect, and improve the health, safety, and welfare of its citizens by establishing areas around locations where children regularly congregate in concentrated numbers, wherein certain predatory offenders are prohibited from establishing temporary or permanent residence.

(Ord. No. 03-2017, 3-26-2017)

Sec. 46-69. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Day Care Center means a facility licensed by the State of Minnesota to provide child care.

Designated Offender means any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state.

Park or *Playground* means any land, including improvements or beach, but excluding trails, sidewalks, commons, or rights-of-way operated by the city, county, state, or Three Rivers Park District for the use by the general public as a recreational area.

Permanent Residence means a place where a person abides, lodges, or resides for 14 or more consecutive days.

School means any public or non-public educational institution that offers educational instruction to individuals.

Temporary Residence means a place, other than a person's permanent residence, where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year or four (4) or more consecutive or non-consecutive days during any month.

(Ord. No. 03-2017, 3-26-2017)

Sec. 46-70. Residency Prohibition; Penalties; Exception.

(a) *Residency Prohibition.*

(1) It is unlawful for any designated offender to establish a permanent residence or temporary residence within 2,000 feet of any school, day care center, park, or playground.

(2) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence of the designated offender to the nearest outer property line of a school, day care center, park, or playground.

(b) *Penalties.* A person who violates this section shall be punished by a fine not exceeding $1,000, or by confinement for a term not exceeding 90 days, or by both such fine and confinement. Each day a person maintains a residence in violation of this Chapter constitutes a separate violation.

(c) *Exceptions.* A designated offender residing within a prohibited area as described in subsection (a) does not commit a violation of this section if any of the following apply:

(1) The designated offender lawfully established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. §243.166, §243.167, or successor statute, prior to the effective date of this section.

(2) The designated offender was a minor when he or she committed the offense and was not convicted as an adult.

(3) The designated offender is a minor.

(4) The school, day care center, park, or playground within 2,000 feet of the designated offender's permanent residence or temporary residence was designated or opened after the designated offender established the permanent residence or temporary residence and reported and registered the residence pursuant to M.S. §243.166 or §243.167, or successor statute.

(5) The residence is also the primary residence of the designated offender's parents, grandparents, siblings, spouse, or adult children.

(6) The residence is a property owned by the Minnesota Department of Corrections.

(Ord. No. 02-2017, 3-26-2017)

Secs. 46-71—46-138. Reserved.

ARTICLE IV. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 46-139. Lurking or loitering.

(a) Lurking, loitering, or being concealed in, upon, or near the public streets, highways, roads, alleys, parks, playgrounds, sidewalks, or other public grounds, and public buildings, places of amusement, entertainment or refreshment, vacant lots, parking lots, or other unsupervised places on any property, whether public or private, not ~~his~~ its own is prohibited:

(1) When such conduct results in the making of any noise, riot, disturbance, or improper diversion, to the annoyance or disturbance of a reasonable person;

(2) When such conduct tends reasonably to or is likely to arouse alarm, anger, fear, or resentment in a reasonable person;

(3) When such persons shall collect in groups or crowds, in, upon or near any street, sidewalk, or public place in the city so as to obstruct public travel or movement thereof.

(4) No person shall affix or operate remotely any surveillance, sound, video or still-image capture equipment deliberately pointed, oriented, or operated to capture sound or images of purposefully or nefariously-targeted subjects on any privately held property without permission of the owner.

(5) Nothing in this section is intended to limit, replace, or supersede any applicable federal law, regulation, rule or constitution provision.

(b) It is unlawful for any adult, parent, or guardian to knowingly or negligently permit their juvenile child to violate this section. The second violations by a juvenile of this section shall be prima facie evidence that the adult, parent, or guardian knowingly or negligently permitted the juvenile to violate this article.

(Code 1987, § 900.0; Ord. No. 05-2015, 11-22-2015)

Sec. 46-140. Trespassing and congregating on business/municipal parking lots and private business premises.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Business/municipal parking lot means any parking lot adjacent to or in the immediate vicinity of any store, restaurant, gasoline station, public or private office building, commercial building, industrial facility, or any other facility which provides free parking for the use and convenience of employees, customers, patrons, guests or invitees.

Owner means any owner or other person lawfully in charge of a business parking lot, including any person authorized by the owner to rights granted the owner by law.

Private business premises means any lands or buildings, or any part thereof, owned or occupied by any store, restaurant, office, factory, church or any other business, whether for profit or not for profit.

(b) *Use of business/municipal parking lots restricted.* No person shall drive any vehicle across, through, into, or out of any business/municipal parking lot in the city except for the purpose of:

(1) Parking immediately prior to transacting business at a place of business, attending church services, attending a lodge or club activity, attending a promotional event, fair or parade, shopping, or patronizing a facility open to the public, adjacent to or in the immediate vicinity of a business/municipal parking lot;

(2) Leaving after parking;

(3) Leaving a passenger to transact business at a place of business, attending church services, attending a lodge or club activity, attending a promotional event, fair or parade, shopping, or patronizing a facility open to the public, adjacent to or in the immediate vicinity of a business/municipal parking lot;

(4) Picking up a passenger; or

(5) Parking while employed at a business in the immediate vicinity.

(c) *Congregating prohibited.* Except for the permitted purposes stated in subsection (b) of this section, no person shall linger, remain, sit or stand in any business/municipal parking lot or private business premises, when prohibited by the owner of a business parking lot or private business premises as expressed by a sign posted on the premises pursuant to subsection (e) of this section, nor shall any person remain in a business/municipal parking lot or private business premises after being ordered to leave the lot by the owner or authorized agent.

(d) *Trespassing prohibited.*

(1) No person shall enter or stay on any business/municipal parking lot or private business premises, without claim of right or consent of the lawful possessor, during such hours as entry is prohibited by conspicuously

posted signs; or

(2) No person shall enter upon the land of another and, without claim of right, refuse to depart therefrom on demand of the lawful possessor or his agent. A demand to depart may be made orally or by posting at reasonable intervals signs which prohibit trespass on the affected land. Any city police officer may be appointed an agent of the lawful possessor of land for the purpose of making a demand to depart therefrom.

(e) *Signs prohibiting trespassing and congregating.* The prohibition set out in subsections (c) and (d) of this section shall be in effect at any business/municipal lot or private business premises where the owner has posted a sign as provided in this subsection on the premises which are visible to an ordinarily prudent individual.

(1) With reference to subsections (b) and (c) of this section, each sign shall contain substantially the following language:

"No Congregating Or Cruising Violators Will Be Prosecuted"

(2) With reference to subsection (d) of this section, the sign shall contain substantially the following language:

"No Parking Or Trespassing Between _____ p.m. and _____ a.m.

Violators Will Be Prosecuted"

(f) *Exceptions.* The following uses of a business/municipal parking lot or private business premises shall not be in violation of this section:

(1) Entrance by owner, occupant, or the employees and agents of the owners or occupant;

(2) Entrance by customers, patrons, suppliers and other persons having lawful business at the business premises or other facility served by the business/municipal park lot during normal business hours, or when such business or facility is otherwise open to the public;

(3) Temporary entrance in any emergency;

(4) Entrance by police officers and city officials in the course of their duty.

(g) *Penalties.* A violation of this section shall be a petty offense.

(Code 1987, § 900.11; Ord. No. 34-1989, 9-18-1989)

Sec. 46-141. Noise in residential areas.

(a) *Gatherings, parties, etc.* No person shall, between the hours of 10:00 p.m. and 7:00 a.m., congregate because of or participate in any party or gathering of people from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area.

(1) No person shall visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating the disturbance.

(2) A police officer may order all persons present, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this article. Owners or tenants of the dwelling unit shall immediately abate the disturbance and if they do not abate the

disturbance they shall be in violation of this section.

(b) *Generating or reproducing noise or sound.* No person shall, between the hours of 10:00 p.m. or 7:00 a.m., create, cause, generate or reproduce a noise or sound of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area.

(c) *Construction activity on any residentially zoned property.* No person shall engage in, permit, or allow construction activities involving the use of manual tools, movement of equipment or power equipment, including, but not limited to, any kind of electric, diesel, or gas-powered machine, at any time other than between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, and 8:00 a.m. and 9:00 p.m. on public holidays, Saturdays and Sundays on any residentially zoned property.

(d) *Construction activity within public right-of-way within.* All construction activity within the public right-of-way within the city limits shall be conducted between the hours 7:00 a.m. and 7:00 p.m. on weekdays, 8:00 a.m. and 5:00 p.m. on Saturdays. No construction activity is allowed on Sundays except in the case of an emergency.

(Code 1987, § 920.15; Ord No. 16-1988, 11-7-1988; Ord. 55-1992, 3-23-1992; Ord. No. 03-2006, 2-26-2006)

Sec. 46-142. Anti-Graffiti Regulations

(a) *Definitions.* For the purposes of this section, the following words shall have the meaning provided to them in this section, except where the context clearly indicates a different meaning.

(1) *Aerosol paint container* means any aerosol container that is adapted or made for the purpose of applying spray paint or other substance capable of defacing property.

(2) *Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angles writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.

(3) *Etching equipment* means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

(4) *Graffiti* means any unauthorized inscription, word, painting, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or despite advanced authorization is otherwise deemed a public nuisance by the City Council.

(5) *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush, or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

(6) *Paint stick* or *graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-fourth of an inch in width.

(7) *Person* means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(b) *Prohibited acts.*

(1) Defacement. It is unlawful for any person to apply graffiti to any natural or man-made surface on any publicly-owned property or, without the permission of the owner or occupant, on any privately-owned property.

(2) Possession of graffiti implements. Unless otherwise authorized by the owner or occupant, it is unlawful for any person to possess any graffiti implements while:

i. Within 200 feet of any graffiti located in or on a public facility, park, playground, swimming pool, recreational facility, or other public building or structure owned or operated by a governmental agency; or

ii. Within 200 feet of any graffiti located in any public place, or on private property, between the hours of 10:00 p.m. and 6:00 a.m.

(c) *Graffiti as nuisance.*

(1) *Declaration.* The existence of graffiti on public or private property in violation of this ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this ordinance.

(2) *Duty of property owner.* It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

(d) *Removal of graffiti.*

(1) *By perpetrator.* Any person applying graffiti on public or private property has the duty to remove the graffiti within 24 hours after notice by the city or private owner of the property involved. This removal must be done in a manner prescribed by the City Manager, Chief of Police, Public Works Director, or their designees. Any person applying graffiti is responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal will constitute an additional violation of this ordinance. Where graffiti is applied by a person under 18 years old, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.

(2) *By property owner or city.* If graffiti is not removed by the perpetrator according to paragraph 1 or the perpetrator is not known, the city may order that the graffiti be removed by the property owner or any person who may be in possession or who has the right to possess such property, pursuant to the nuisance abatement procedures in City Code Section 42-6 et. seq. If the property owner or responsible party fails to remove offending graffiti within the time specified by the city, the city may commence abatement and cost recovery proceedings for the graffiti removal in accordance with City Code Section 42-6 et. seq.

(Ord. No. 07-2016, 8-21-2016)

Secs. 46-143—46-165. Reserved.

ARTICLE V. OFFENSES INVOLVING ADMINISTRATION OF GOVERNMENT

Sec. 46-166. Rescuing prisoners.

No person shall by force or fraud, rescue from lawful custody of from an officer or person having him in lawful custody, a prisoner held upon a charge, arrest, commitment, conviction, or sentence, for the violation of any ordinance or law.

(Code 1987, § 915.05)

Sec. 46-167. Aiding escape from custody.

No person shall effect or facilitate the escape of a prisoner, whether such escape shall be effected or attempted or not, nor shall any person convey to any prisoner any information designed to facilitate or send any disguise, instrument, weapon, or other such things to any such prisoner or person in custody.

(Code 1987, § 915.10)

Sec. 46-168. Concealing escaped prisoner.

No person shall knowingly or willfully conceal or harbor for the purpose of concealment, a person who has escaped or who is escaping from custody from the violation of any ordinance or law.

(Code 1987, § 915.15)

Sec. 46-169. False identification.

(a) *Possession.* Every person who shall possess false identification or the identification papers of another with intent to display the same to deceive anyone thereby as to identity, age, or address, shall be guilty of a misdemeanor.

(b) *Display.* Every person who shall display false identification or the identification papers of another with the intent to deceive anyone thereby as to identity, age, or address, shall be guilty of a misdemeanor.

(c) *Presumptive intent.* Possession of false identification or the identification papers of another shall be presumptive evidence of intent to display the same to deceive.

(Code 1987, § 915.20)

Sec. 46-170. Communicating false information.

No person shall in any case or under any circumstances, not otherwise provided for, willfully communicate either orally or in writing or by any other method, to a city officer in discharging or attempting to discharge the duties of his office, any false or incorrect name or identity, or upon lawful demand and reasonable grounds of the city officer refuse to correctly identify oneself.

(Code 1987, § 915.25)

Chapter 50

PARKS AND RECREATION*

***State law reference—**Authority to acquire, maintain, manage and regulate parks, Minn. Stats. §§ 412.291, 412.511; parks generally, Minn. Stats. ch. 448.

ARTICLE I. IN GENERAL

Sec. 50-1. Purpose and Intent.

The City of Mound is entrusted by the public with the responsibility of managing the public lands, public parks, public commons, public infrastructure, and public property located in the City for the use and enjoyment of all persons. The City parks, green spaces, beaches, waters, piers, trails, parking lots and other public facilities offer opportunities for a broad range of public uses including gatherings, personal and group recreational activities, concerts, picnics and peaceful meditation. The City is committed to providing access and use of parks, green spaces, beaches, waters, piers, trails, parking lots, and other public facilities in order to sustain the quality, accessibility, and vitality of these spaces and facilities now and in the future. The City recognizes that the commercial use of these public resources by private parties can be inconsistent and against the interest of public, deplete public resources, and jeopardize the sustainability of these public resources. In furtherance of this recognition, the City desires to prohibit the sale or rental of goods, products, or services by private parties on property owned or operated by the City when such goods, products, or services are delivered upon sale or rental by the private party selling or renting the good, product, or service except when otherwise permitted by the City Code or the laws and regulations of the State.

Sec. 50-2. Prohibition.

Except as otherwise permitted by the City Code or the laws and regulations of the State, the display, offer, or attempt to sell or rent goods, products, or services by private parties is prohibited on property owned or operated by the City when such goods, products, or services are delivered upon sale or rental by the private party selling or renting the good, product, or service.

Sec. 50-3. Penalty.

Any person found in violation of Section 50-2 shall be guilty of a misdemeanor.

(Code 2014, Ord. No. 06-2014, 5-25-14)

Secs. 50-4—50-18. Reserved

ARTICLE II. PUBLIC CONDUCT IN PARKS

Sec. 50-19. Hours of use.

To protect the peace and quiet of persons residing near public parks and to protect public property from vandalism, all public parks shall be closed to public use from 10:00 p.m. until 5:00 a.m. the next day. Public parks shall be open for public use from 5:00 a.m. until 10:00 p.m. of each day. Any person convicted of violating this section shall be guilty of a misdemeanor.

(Code 1987, § 615.01)

Sec. 50-20. Public gatherings; permit required.

Use of a public park or commons by any group consisting of 15 or more individuals gathering together or by any organization which brings 15 or more persons on to public lands to meet, picnic, or conduct a group activity shall require a permit from the city. The city may issue said

permit if he determines that the area to be used for said meeting or group activity is available and that its collective use will not interfere with traffic and general use of the park or commons and that said activity is not beyond the ability of the police in maintaining order. The city may impose a permit fee and other reasonable conditions including a requirement that said group remove all litter and trash and provide a cash deposit to clean up the park area, and he may obtain the advice of the Police Chief and other staff personnel before issuing said permits. The city may deny said permit or refer it to the City Council for consideration. Any permits issued by the city or the City Council shall be subject to reasonable conditions to protect the public's investment in its public parks and to protect the general public's use of the park and common areas.

(Code 1987, § 615.05)

Chapter 54

SOLID WASTE*

***State law reference—**Waste Management Act, Minn. Stats. ch. 115A; littering, Minn. Stats. §§ 169.42, 609.68, 609.671, subd. 13.

ARTICLE I. IN GENERAL

Secs. 54-1—54-18. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

DIVISION 1. GENERALLY

Sec. 54-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air contamination means dust, fumes, mist, smoke, other particulate matter, vapor, gas, malodorous substances, or any combination thereof.

Air pollution means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

Collector of garbage and refuse means many person holding a valid city license, who shall offer to, or engage in, the collection of garbage and/or refuse.

Commercial establishment means any premises where a commercial or industrial enterprise of any kind is conducted and shall include establishments of nonprofit organizations where food is prepared or served or goods are sold.

Contagious disease refuse means refuse such as, but not limited to, bedding, wearing apparel, or utensils from residential dwelling units or other buildings where highly infectious or contagious diseases are or have been present.

Emission means the release into the outdoor atmosphere of air contaminants.

Garbage means animal and vegetable wastes resulting from the handling, preparation, processing, storage, serving and consumption of food and shall also include all other animal wastes.

Incineration means the process by which solid wastes are burned for the purpose of volume and weight reduction.

Land pollution means the presence in or on the land of any solid waste in such quantity, of such nature and duration, and under such condition as will affect injuriously any public waters, create air contaminants, soil contaminants, or cause air pollution.

Multiple residence units means any building comprised of more than two dwelling units.

Objectionable odor means any odor deemed objectionable when it constitutes a nuisance to a sampling of the people exposed to it and believing it to be objectionable in their usual places of occupancy.

Open burning means burning any matter whereby the resultant combustion products are emitted directly to the open atmosphere without passing through an adequate stack, duct, or chimney as established by the state pollution control agency.

Putrescible material means solid waste capable of rotting and reaching a foul state of decay or decomposition.

Refuse means putrescible and nonputrescible solid wastes, except body wastes and garbage, including, but not limited to, rubbish, ashes, cans, plastic containers, paper, cardboard, glass, crockery, wood, yard clippings, leaves, Christmas trees, soil, tires, rocks, household construction material, cement and cement products, bricks, household furniture and appliances, and any other household refuse or materials. The term "refuse" shall not include construction material or other waste or debris resulting from construction or reconstruction of buildings and other improvements or trees in excess of six inches in diameter.

Residential dwelling unit means any single building consisting of two or less separate dwelling places with individual kitchen facilities for each. It also includes any boardinghouse in a residential district.

Sludge waste means inorganic waste in a semi-liquid state, excluding toxic or hazardous waste, but including waste from automobile wash racks, steam cleaning products, turbid waters from any source and similar nonnoxious materials.

Toxic and hazardous wastes means waste material including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive material, flammable or explosive material, and similar harmful chemicals and wastes which require special handling and must be disposed of in a manner to conserve the environment and protect the public health and safety.

(Code 1987, § 490.01)

Sec. 54-20. State air pollution rules adopted by reference.

Minn. Rules APC 1—APC 32, inclusive, of the state pollution control agency are hereby adopted by reference and shall be as effective as if recited in full. The City Clerk shall maintain on file three copies of said rules marked "official copy" for examination by the general public and shall furnish copies of this article and said rules and regulations at cost upon request.

(Code 1987, § 490.10)

Sec. 54-21. Mandatory precollection practices.

The owner and/or occupant of any premises, business establishment, or industry shall be responsible for the confined storage of all solid waste accumulated at that premises, business establishment, or industry as follows:

(1) *Garbage.* Garbage and similar putrescible waste shall have drained from it all free liquids and wrapped or bagged before deposited for collection.

a. No explosive or highly inflammable material shall be so deposited, but shall be disposed of as directed by the Fire Chief at the expense of the owner or possessor thereof.

b. Contagious disease refuse shall not be deposited for regular collection but shall be disposed of as directed by the sanitarian or health officer at the expense of the owner or possessor thereof.

(2) *Containers to be provided and maintained in sanitary condition.* Containers shall be maintained in a clean and sanitary condition and kept free from any substance which will attract or breed flies, mosquitoes, or other insects.

(3) *Multiple residence units precollection storage.* Multiple-residential units shall either be equipped with refuse containers and refuse pickup service as herein provided or be equipped with a commercial incinerator complying with the requirements of the state pollution control agency. Refuse containers provided as an alternative to or in addition to such incineration shall be at least one cubic yard in capacity, shall be conveniently located in relationship to the residential units for which they are provided, shall be watertight and rodentproof with self-closing lids, and shall be kept in an enclosed structure concealing them from public view. Such structure shall have a raised concrete base or blacktopped base and shall be surrounded by a concrete or blacktop barrier curb. Such structure shall be maintained in a neat and orderly manner at all times. The refuse containers shall be located so that their contents are inaccessible to a point at least two feet above the base of the container in the enclosing structure or as approved by the planning staff for screening of the container. The owner or operator of such multiple residential property shall provide for garbage pickup from such containers each day or as required to maintain containment of all debris. Refuse, debris, garbage, and other waste materials shall not be permitted to be accumulated in or near the enclosing structures except in the containers provided. There shall be daily cleanup in and around each such enclosing structure.

(4) *Commercial and industrial precollection storage.* The owner or occupant of any commercial or industrial establishment, or any other property which produces a large volume of garbage or refuse, or both, shall also comply with the provisions of subsection (3) of this section.

(Code 1987, § 490.05)

Sec. 54-22. General prohibitions.

(a) No person shall dispose of within the territorial land or public water limits of the city any garbage, refuse, oils, bilge water, sludge waste, or toxic and hazardous waste except in the manner provided herein.

(b) No person shall discharge from any source whatsoever such quantities of air contaminants, smoke, or other material which causes injury, detriment, nuisance, or annoyance to a considerable number of persons or to the public or which endangers the comfort, repose, health, or safety of any such persons or the public or which causes or has a natural tendency to cause injury or damage to business or property.

(c) No person shall cause or permit the handling, use, transporting, or storage of any material in a manner which may allow avoidable amounts of particulate matter to become airborne.

(d) No person shall incinerate, either privately or commercially, any combustible materials in other than incinerators approved by the state pollution control agency.

(e) No person shall cause or allow the open burning of any sweeping, trash, lumber, leaves, grass, straw, paper, refuse, or other combustible materials, except as provided herein.

(f) No person shall cause to effuse, emit, or release into the atmosphere any pesticides containing DDT, DDD (TDE), aldrin, dieldrin, endrin, haptachlor or lindane.

(g) No person shall circumvent or use any devise which conceals or dilutes an emission of an air contaminant which will otherwise violate an air pollution regulation.

(Code 1987, § 490.15)

Secs. 54-23—54-47. Reserved.

DIVISION 2. COLLECTORS*

***State law reference—**Licensing of solid waste collection, Minn. Stats. § 115A.93.

Sec. 54-48. Licensing of garbage and refuse collectors.

No person shall engage in the business of garbage or refuse collection in the city without having first obtained a license therefore approved by the City Council as follows:

(1) *Application.* Any person desiring a license shall make application to the City Clerk. The application shall accurately state the following:

a. The name of the owner of the collection service.

b. The proposed charges for hauling garbage and refuse for each size container or other schedule of charges to be imposed by the applicant.

c. The application shall include a description of services to be rendered and a schedule of pickups and proposed days of collection in different areas of the city.

d. A description of each motor vehicle to be used for the service, including the license number thereof.

e. The manner and kind of service proposed to be given the customers.

f. Filing with the clerk of the bidding dates and calendar periods for which services are rendered.

g. A signed statement by the applicant that he will collect and dispose of all garbage and refuse as defined herein.

(2) *License fee.* Each application shall be accompanied with the annual license fee as established by the city, per company, for vehicles to be used in the city for garbage and refuse collection. Licenses shall be effective for one calendar year from March 1, except that if a portion of the license year has elapsed when the application is made, the license will be issued on a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.

(3) *Insurance.* No license shall be issued until the applicant files with the City Clerk a current policy of insurance covering all vehicles to be used by the applicant in conducting his business within the city. The minimum limits for such insurance are $1,000,000.00 per occurrence with an annual aggregate limit of $2,000,000.00. Such insurance shall be kept in force during the license period and shall provide for notification to the city prior to termination or cancellation of said insurance. Any license issued shall automatically be revoked at the time of expiration or cancellation of such insurance unless and until other insurance is provided.

(4) *Performance bond.* Before a license is granted, the applicant shall furnish

to the city and deposit with the City Clerk a certified performance bond in the sum of $1,000.00 to be conditioned upon the faithful performance by the licensee for all work entered into or contracted for by the licensee and further conditioned upon compliance with all the provisions and requirements of this section and all applicable sanitary rules and regulations.

(Code 1987, § 490.25; Ord. No. 01-2001, 2-25-2001)

Sec. 54-49. Collection vehicles for hauling garbage and refuse.

(a) *General conditions.* All persons hauling or conveying garbage or refuse over the streets within the city shall use a vehicle so constructed or equipped with adequate accouterments and maintained so as to prevent the escape of offensive odors and any of its load from being blown, dropping, sifting, leaking, or other escaping therefrom. All such vehicles shall be kept in a clean and sanitary condition and as free from offensive odors as possible. Any vehicle customarily used for said purposes shall be thoroughly disinfected at least once each week unless the same has not been used since the last disinfection thereof. Each vehicle, so used, traversing city streets, licensed or not, shall be subject to inspection by the city at all reasonable times. Each vehicle shall be equipped with a broom and scoop for use in the immediate removal of any spillage. Any vehicle for which a city license is applied, or which is already licensed, shall have clearly painted in letters of no less than four inches in height in a color visible both by day and by night, on the truck cab doors, the name of the applicant or licensee, the name of the owners, company, or corporation operating such truck, and their address and telephone number. The license issued shall be kept in the truck at all times.

(b) *Operating hours.* Collection vehicles shall operate within the city and make residential collections only between the hours of 6:00 a.m. and 8:30 p.m. daily, except Sunday, on which day residential collection is banned. There shall be no restriction on hours or days for collection from commercial or industrial uses.

(c) *Obligation of licensed collectors.* A licensed collector shall diligently perform his obligation to the city and customers in the manner provided by this article.

(d) *No vested right.* No person licensed pursuant to this article shall gain a vested right in said license. The city may, upon finding that public necessity requires, determined to establish another means of garbage or refuse collection.

(Code 1987, § 490.30)

Secs. 54-50—54-71. Reserved.

DIVISION 3. RECYCLING

Sec. 54-72. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aluminum recyclables means disposable containers fabricated primarily of aluminum commonly used for soda, beer and other beverages.

Can recyclables means all disposable containers fabricated primarily of metal or tin.

Collection means the aggregation of recyclable materials from the place at which it is generated and includes all activities up to the time when the waste is delivered to a designated facility.

Corrugated cardboard means heavy paper with alternating ridges and grooves for use in packing or boxing materials.

Glass recyclables means jars, bottles and containers which are primarily used for packaging and bottling of various materials.

Multiple-family dwelling means a building or a portion thereof containing nine or more dwelling units including detached, semi-detached and attached dwellings.

Paper recyclables means newsprint and office paper but does not include magazines or similar periodicals.

Plastic recyclables means any plastic bottle with a neck.

Recyclable materials means materials that are separated from refuse for the purpose of recycling and include aluminum recyclables, can recyclables, glass recyclables, paper recyclables, corrugated cardboard and plastic recyclables.

Recycling means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

Refuse means waste material, garbage, rubbish and yard waste as follows:

(1) Waste material includes natural soil, earth, sand, clay, gravel, loam, brick, plaster, concrete and ashes.

(2) Garbage includes animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(3) Rubbish, consisting of wood, dead trees or branches, chips, shavings, rags, and nonrecyclable materials.

(4) Yard waste includes compost materials such as grass clippings, leaves, weeds, straw and other forms of organic material, but does not include trees, brush or similar materials.

(Ord. No. 48-1991, § 491.01, 7-10-1991)

Sec. 54-73. Penalty.

A violation of any provision of this division shall result in a $100.00 penalty for the owner of the multiple-family dwelling or owner/occupant of commercial, industrial and institutional property. The violator shall be given a written warning for the initial violation. The penalty stated in this section shall be imposed for each subsequent violation. Penalties that remain unpaid for more than 30 days shall be charged to the utility account of the violator. Any penalty that is placed on a utility account shall be an assessment against the violator's property. Such amount shall be certified with the county auditor and collected in the same manner as taxes against the premises. The fourth and each succeeding violation of this division shall be a misdemeanor and violators may be penalized by up to a $700.00 fine and/or 90 days in jail.

(Ord. No. 48-1991, § 491.30, 7-10-1991)

Sec. 54-74. Separation and collection of recyclable materials.

(a) It shall be the duty of every owner of a multiple-family dwelling unit having recyclable materials which accumulate on the premises to separate recyclable materials from refuse, and to provide space for recyclable materials so that residents may place the recyclable material in a city approved container and set the recyclable material out for collection in a manner that is designated by the city.

(b) The city shall ensure that a service is available for the collection of recyclable materials from all multiple-family dwelling units. The city shall provide owners and occupants of multiple-family dwelling units with information regarding authorized recycling procedures.

(Ord. No. 48-1991, § 491.05, 7-10-1991)

Sec. 54-75. Collection.

(a) Collection, removal and disposal of recyclables shall be supervised by the city, which shall have the power to establish a time, method and routes of service. The owners of multiple-family dwelling units shall make information regarding dates and time of collection of recyclables available to all tenants.

(b) Collection of recyclables from multiple-family dwellings shall be by a hauler selected and paid by the owner or manager of such premises or by an association governing such premises, but which hauler is then duly licensed by the city under section 54-48 and other applicable ordinances of the city or county. Also such collection shall be done in compliance with all other applicable ordinances of the city now or hereafter in effect.

(c) It shall be the duty of each owner and occupant of commercial, industrial and institutional property having recyclable materials which accumulate on the premises to separate recyclable materials from refuse and provide for the collection of recyclable materials in accordance with the procedures established by the city.

(Ord. No. 48-1991, § 491.10, 7-10-1991)

Sec. 54-76. Prohibiting unauthorized collection of recyclable materials.

(a) It shall be unlawful for any person who is not authorized by the city to remove, take for salvage or destroy any recyclable materials including, but not limited to, aluminum recyclables, can recyclables, corrugated cardboard, glass recyclables, paper recyclables that have been set out for collection.

(b) Any person violating any provision of this division is guilty of a misdemeanor and any such person shall be guilty of a separate offense for each and everyday or portion thereof during which any violation of this division is committed, continued or permitted.

(Ord. No. 48-1991, § 491.15, 7-10-1991)

Sec. 54-77. Container requirements.

Containers shall be provided by the owners of multiple-family dwelling units and shall be maintained in a clean and sanitary condition by owners. Owners shall be responsible for replacing and purchasing extra containers as needed. The containers shall be located in a manner so as to prevent them from being overturned or obstructing pedestrian or motor vehicle traffic. The containers shall be located in such a manner as to allow for collection by the city approved recycling hauler.

(Ord. No. 48-1991, § 491.20, 7-10-1991)

Sec. 54-78. Reports to city.

As and when requested by the city from time to time, the city requires the haulers of recyclables, to keep complete and accurate records of the total tons of recyclables collected each month from their respective multiple-family dwellings, together with the actual weight or percentage of the total that each recyclable material represents, and the markets used for the sale of, and primary purchasers of, such recyclables. Such records shall be sent to the city when requested by the city. The city also requires the haulers to prepare and submit to the city, at the request of the city, such other reports, data and information relative to the separation, collection and disposal of recyclables as may be required by any statute, law, ordinance, rule or regulation

now or hereafter applicable, or which may now or hereafter be requested of the city by the county. All such records, reports, data and information, once received by the city shall become the property of the city to be used as it shall determine without obligation to any person.

(Ord. No. 48-1991, § 491.25, 7-10-1991)

Secs. 54-79—54-99. Reserved.

ARTICLE III. PERMITS FOR TEMPORARY PLACEMENT OF CONTAINERS IN PUBLIC RIGHT-OF-WAY

Sec. 54-100. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Container means a dumpster, collection bin, collection box, tub, roll-off box, roll-off container, or any other receptacle used to store construction, remodeling or demolition debris.

(Ord. No. 06-2001, § 492.05, 8-26-2001)

Sec. 54-101. Procedure.

No person shall place a container on any public right-of-way without first obtaining a permit from the public works superintendent.

(Ord. No. 06-2001, § 492.10, 8-26-2001)

Sec. 54-102. Application.

An applicant for a permit shall provide the following information:

(1) The name and address of the applicant;

(2) The location of the project to be undertaken;

(3) The length of time for which the permit is needed;

(4) The type of debris that will be deposited in the container;

(5) Proof that the applicant has all necessary licenses required to perform the project; and

(6) Any other information deemed necessary by the public works superintendent.

(Ord. No. 06-2001, § 492.15, 8-26-2001)

Sec. 54-103. Insurance.

(a) A permit holder shall maintain or cause to be maintained the insurance with respect to the container in the amount of $1,000,000.00 per occurrence with an annual aggregate limit of $2,000,000.00.

(b) The insurance required by this section shall protect the city from defense costs and claims for damage for bodily injury, personal injury, including accidental death, and claims for property damage.

(Ord. No. 06-2001, § 492.20, 8-26-2001)

Sec. 54-104. Condition of container.

Containers must be well maintained and in good working condition, display the name and telephone number of the owner of the container, and be suitably supported at each contact point to prevent damage to paved surfaces. Containers must be covered when not in use if the material

inside is easily airborne, poses a hazard, gives off odors or is otherwise offensive. Debris generated by the project must be placed inside the container and may not be placed on the public right-of-way or in any place in which such debris interferes with use of the public right-of-way.

(Ord. No. 06-2001, § 492.25, 8-26-2001)

Sec. 54-105. Warning required.

The container shall be properly reflectorized at all times. From sunset to sunrise, a sufficient number of warning lights shall be placed in such a manner that they will give proper warning of the container in accordance with part VI of the Minnesota Manual on Uniform Traffic Control Devices.

(Ord. No. 06-2001, § 492.30, 8-26-2001)

Sec. 54-106. Duration of permit.

No permit shall be issued for a period of more than seven days.

(Ord. No. 06-2001, § 492.35, 8-26-2001)

Sec. 54-107. Permit fee.

The permit fee shall be as established by the city.

(Ord. No. 06-2001, § 492.40, 8-26-2001)

Sec. 54-108. Denied and conditional permits.

The public works superintendent may deny a permit or place conditions upon the issuance of a permit if the denial or conditions are required due to traffic, width, public health or safety, or other considerations.

(Ord. No. 06-2001, § 492.45, 8-26-2001)

Sec. 54-109. Revocation of permits.

The public works superintendent may revoke a permit if the permit holder violates any provision of this article or any other applicable law, ordinance, rule or regulation.

(Ord. No. 06-2001, § 492.50, 8-26-2001)

Sec. 54-110. Major disaster provision.

In the event of a major disaster or emergency situation, the City Manager is hereby authorized to take steps deemed necessary to expedite the provisions of this article, while preserving its intent.

(Ord. No. 06-2001, § 492.55, 8-26-2001)

Sec. 54-111. Applicability of other law.

The owner of the container and the person placing it on the public right-of-way shall comply with all other laws, ordinances, rules, and regulations governing its use and maintenance.

(Ord. No. 06-2001, § 492.60, 8-26-2001)

Sec. 54-112. Violation of this article.

The city may remove any container placed in a public right-of-way in violation of this article. The owner of the container or the person placing it in the public right-of-way shall pay to the city all costs, fees, penalties, or other expenses incurred by the city in removing the container, and storing and disposing of the container and its contents. In addition, the city shall charge daily storage fees in such amount as established by the city. If the container is not claimed within 30 days by its owner or the person responsible for placing it in the public right-of-way, it may be

disposed of as abandoned property, but such disposal shall not diminish the responsibility of the owner or the person responsible for placing it in the public right-of-way to pay all amounts due under this article. A container shall not be released from storage by the city until all amounts due under this article have been paid. The provisions of this article are in addition to any other penalty provided for in this Code.

(Ord. No. 06-2001, § 492.65, 8-26-2001)

Chapter 58

SPECIAL ASSESSMENT*

***State law reference**—Special assessments, Minn. Stats. ch. 429.

Sec. 58-1. Local improvements and special assessments.

This chapter applies to special assessments imposed against real property for local improvements under the provisions Minn. Stats. ch. 429.

(Code 1987, § 370.01)

Sec. 58-2. Prepayment in whole.

The owner of property assessed for a local improvement may pay the whole of such assessment in the manner provided by Minn. Stats. § 429.061, subd. 3.

(Code 1987, § 370.05)

Sec. 58-3. Prepayment in part.

The owner of property assessed for a local improvement, where the total principal amount of the assessment against such property exceeds $300.00, may pay any part of the assessment, without interest, to the city treasurer. The partial prepayment may be made within 30 days after the adoption of the assessment roll containing the assessment. The city treasurer shall reduce the principal amount of such assessment by the amount of the prepayment prior to the certification of the assessment roll or the first installment thereof to the county auditor. The remaining unpaid balance of the assessment shall be payable in the same number of years and with the same rate of interest as set forth in the assessment roll containing the assessment. No partial prepayment of less than $100.00 may be made.

(Code 1987, § 370.10)

Sec. 58-4. Service charges and special assessment against benefited properties.

(a) The city is authorized by Minn. Stats. § 429.101, to provide for the collection of unpaid special charges for all or any part of the cost of snow, ice, or rubbish removal from sidewalks or public ways; weed elimination from streets or private property; removal or elimination of public health or safety hazards from private property; installation or repair of water service lines; street sprinkling or other dust treatment of streets; the trimming and care of trees and the removal of unsound trees from any street or public way; the treatment and removal of insect infested or diseased trees on private property; the repair of sidewalks and alleys; or the operation of a street lighting system as a special assessment against the property benefited.

(b) The city hereby provides that all of the services specified in Minn. Stats. § 429.101, subd. 1(a) may be special assessed against benefited properties which require these services. The city shall provide the property owner as shown on city tax records with a written notice to correct the problems addressed in subsection (a) of this section. He may also provide in said written notice that the primary responsibility for corrections of the problem shall be upon the property owner or occupant to do the work correcting the problem within a specific time. This provision shall apply to all cases except street sprinkling or other dust treatment, alley repair, tree trimming, care and removal or the operation of a street lighting system. If the property owner does not correct the problem or remove or eliminate the public health or safety hazard, the notice shall state that the city will do the work and attempt to collect the costs from the property owner or other person served for the charges and if said costs are not paid the unpaid charges shall be special assessed pursuant to the provisions of Minn. Stats. § 429.101.

(c) In addition to the assessment, a certification fee as established by the city, may be certified to the county auditor for collection as other taxes are collected.

(Code 1987, § 370.15; Ord. No. 59-1992, 9-14-1992; Ord. No. 01-2001, 2-25-2001)

Chapter 62

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***State law reference—**General powers relative to streets, sidewalks and public grounds, Minn. Stats. § 412.221, subds. 6, 7, 18; roads generally, Minn. Stats. ch. 160; bridges generally, Minn. Stats. ch. 165.

ARTICLE I. IN GENERAL

Secs. 62-1—62-10. Reserved.

ARTICLE II. PRIVATE STRUCTURES AND PRIVATE CONSTRUCTION ACTIVITIES ON PUBLIC LAND

Sec. 62-11. Special permits for certain structures on public land.

(a) *Construction on public land.* Construction of any kind on any public way, park or commons, or the alteration of the natural contour of any public way, park, or commons, is unlawful unless a special construction on public land permit is issued as provided in this article. Any proposed construction, special use or land alteration shall require the applicant to provide necessary drawings to scale, specifications of materials to be used, proposed costs, and purpose for change. All special permits shall require a survey by a registered land surveyor before a special permit will be issued. Survey shall comply with the city's survey requirements. Copies of such surveys, drawings, specifications of materials, proposed costs and statements of purpose shall be furnished to the city and kept on file in the city offices. No special permit shall be issued unless approved by the Councilmember.

(b) *Types of construction requiring a special construction on public land.* All stairways, retaining walls, fences, temporary structures, stone work, concrete forming, or any type of construction shall require a special permit. No special construction permit shall be issued for construction of boathouses or other buildings on public land under this article or any other ordinance of the city.

(c) *Public land repair.* No person shall conduct any structural repair on any boathouse or other structure on public land without first receiving a special repair permit from the city in accordance with this subdivision. Staff recommendations for structural repair shall be consistent with current applicable zoning regulations. Applications for repairing existing boathouses or other structures may be obtained from the city. All applications for special repair permits shall be reviewed by the City Council. The Council shall determine if the repair permit shall be granted or denied, and may order any structure to be removed. The Council shall have the right to impose any reasonable conditions it may deem advisable to protect the public's use of the public shoreline.

(d) *Land alteration.* A special land alteration permit shall be required from the city before any alterations are made on public lands:

(1) Which would result in any changes to the following:

a. Shoreline;

b. Drainage;

c. Grade;

d. Pitch;

e. Slope; or

f. Trees;

(2) Which require the removal or placement of any fill; or

(3) Which eliminates, adds or develops any access road or land.

This section specifically includes any alterations to uses which are nonconforming on the date the ordinance from which this article is derived became effective. No special permit shall be issued unless approved by the Council. Structures located on public lands that are ordered removed by the City Council or by the building official under any code or law may proceed under the supervision and direction of the city without the necessity for obtaining removal permits from the City Council.

(e) *Exceptions to City Council approval.*

(1) The installation of a stairway to provide access to an approved dock location is a recognized need, and does not require the prior approval of the City Council. The city may approve permits for the installation, replacement, and maintenance of stairways for individual dock site holders. All stairways shall be constructed according to the building code as approved by the city. A building permit may be required with a fee to be charged according to the building permit fee schedule in effect at the time of the permit issuance. General public access stairways are not exempt and require City Council approval.

(2) Maintenance or replacement of landscaping, stairs, steps, retaining walls or similar appurtenances in the same size and in the same location which are normal and customary for a residential property shall not require City Council approval.

(3) Property owner request for removal of any tree, or any portion thereof, on public property that is dead, diseased, or deemed to be a hazard or nuisance as determined by the Public Works Director or designee shall not require City Council approval.

(4) Removal of any tree, or any portion thereof, on public property that is dead, diseased, or deemed to be a hazard or nuisance as determined by the Public Works Director or designee shall not require City Council approval.

(5) Removal of or control of noxious weeds, invasive species, or volunteer sapling/small diameter, low-value (i.e., Soft Maple, Cottonwood, Boxelder) trees in native, natural, or unmaintained areas shall not require City Council approval.

Nothing in the aforementioned Sections 62-11 (e) above shall prevent Staff from requiring the submittal and processing of a Public Lands Permit application if it is determined that it is in the public's best interest that a formal review process be undertaken. This process may require review of the submitted application by the Planning Commission, the Parks Commission, or Docks and Commons Commission prior to the City Council taking action.

(f) *Street excavation permit required.* Any permit issued under the provisions of this article is in addition to and not in lieu of any street excavation permit which may be required under the provisions of article III of this chapter.

(g) *Certain encroachments to continue.* All encroachments (structures, buildings, boathouses, decks, sheds, retaining walls, fences, flagpoles, birdhouses, and other miscellaneous items) existing on April 1, 1976, or that have received prior written City Council approval (approval consists of a permit or recognition by City Council resolution or other written city approval), are hereby recognized and allowed to continue subject to the following:

(1) The building official shall conduct an inspection of each public commons not more frequently than every four years on a rotating basis and evaluate the permitted encroachments for safety and condition. The city shall issue correction notices as needed.

(2) The city shall follow up with a complete status report to the City Council to be completed each year by the end of June at which time the Council may advise any corrective action.

(Code 1987, § 320.01; Ord. No. 54-1991, 12-23-1991; Ord. No. 62-1993, 4-19-1993; Ord. No. 108-2000, 7-16-2000; Ord. No. 04-2014, 4-20-2014; Ord. No. 04-2015, 11-22-2015)

Secs. 62-12—62-22. Reserved.

ARTICLE III. EXCAVATIONS

Sec. 62-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person making written application to the City Manager for an excavation permit hereunder.

Excavation work means the excavation and other work permitted under an excavation permit and required to be performed under this article.

Permittee means any person who has been granted and has in full force and effect an excavation permit issued hereunder.

(Code 1987, § 605.01)

Sec. 62-24. Routing of traffic.

The permittee shall take appropriate measures to ensure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the city may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city Police Department. The following steps shall be taken before any highway may be closed or restricted to traffic:

(1) The permittee must receive the approval of the City Manager and the Police Department therefor;

(2) The permittee must notify the city of any street so closed;

(3) Upon completion of construction work, the permittee shall notify the city and city Police Department before traffic is moved back to its normal flow so that any necessary adjustments may be made;

(4) Where flaggers are deemed necessary by the city, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the city will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are not existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the city. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment.

(Code 1987, § 605.30)

Sec. 62-25. Clearance for fire equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of piles of material or other obstructions.

(Code 1987, § 605.35)

Sec. 62-26. Protection of traffic.

The permittee shall erect and maintain suitable barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

(Code 1987, § 605.40)

Sec. 62-27. Protection of adjoining property.

The permittee shall at all times and at the expense of the permittee preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license or waiver from the owner of such private property for such purpose. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property, the city.

(Code 1987, § 605.50)

Sec. 62-28. Protective measures.

The permittee shall erect such fence, railing, or barriers about the site of the excavation work as shall prevent danger to persons using the city street or sidewalks, and such protective barriers shall be maintained until the work is completed or the danger removed. At twilight, there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets, suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers, or any lights provided there for the protection of the public.

(Code 1987, § 605.55)

Sec. 62-29. Attractive nuisance.

It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment, or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health.

(Code 1987, § 605.60)

Sec. 62-30. Care of excavated material.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the City Manager shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

(Code 1987, § 605.65)

Sec. 62-31. Damage to existing improvements.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered, the permittee fails to furnish the necessary labor and materials for such repairs, the city engineer shall have the authority to cause said necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee. The permittee shall also be liable on the bond provided therefor.

(Code 1987, § 605.70)

Sec. 62-32. Cleanup.

As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the City Manager. From time to time as may be ordered by the city engineer, and in any event immediately after completion of said work, the permittee shall at the permittee's expense clean up and remove all refuse and unused materials of any kind resulting from said work and upon failure to do so within 24 hours after having been notified to do so by the City Manager, said work may be done by the city, or by a contractor chosen by the city, and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

(Code 1987, § 605.80)

Sec. 62-33. Protection of watercourses.

The permittee shall provide for the flow of all watercourses, sewers, or drains intercepted during the excavation work and shall replace the same in as good a condition as it found them or shall make such provisions for them as the city engineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, mulch, silt, slickings, or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

(Code 1987, § 605.85)

Secs. 62-34—62-54. Reserved.

ARTICLE IV. RIGHT-OF-WAY USE BY TELECOMMUNICATION PROVIDERS AND UTILITIES

DIVISION 1. GENERALLY

Sec. 62-55. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

Applicant means any person requesting permission to excavate or obstruct a right-of-way.

City means the City of Mound, Minnesota. For the purposes of section 62-68, the term "city" means its elected officials, officers, employees and agents.

Commission means the Minnesota Public Utilities Commission.

Congested right-of-way means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stats. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

Construction performance bond means any of the following forms of security provided at the permittee's option:

(1) Individual project bond;

(2) Cash deposit;

(3) Security in a form listed or approved under Minn. Stats. § 15.73, subd. 3;

(4) Letter of credit, in a form acceptable to the city;

(5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation cost, subject to Minn. Rules pt. 7819.1100, means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. Rules pts. 7819.9900—7819.9950.

Degradation fee means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Delay penalty means the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Department means the Public Works Department of the city.

Department inspector means any person authorized by the city to carry out inspections related to the provisions of this article.

Director means the Public Works Director of the city, or his designee.

Emergency means a condition that:

(1) Poses a danger to life or health, or of a significant loss of property; or

(2) Requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Excavation permit means the permit which, pursuant to this article, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Excavation subdivision permit fee means money paid to the city by an applicant to cover the costs as provided in section 62-139.

Facility or *facilities* means tangible asset in the public right-of-way required to provide utility service. The term "facility" does not include facilities to the extent the location and relocation of such facilities are preempted by Minn. Stats. § 161.45, governing utility facility placement in state trunk highways.

Five-year project plan shows projects adopted by the city for construction within the next five years.

High-density corridor means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Hole means an excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

Local representative means a local person or designee of such person authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this article.

Management costs means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-

of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minn. Stats. §§ 237.162 or 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to section 62-146.

Obstruct means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Obstruction permit means the permit which, pursuant to this article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein, including a blanket permit for a period of time and for types of work specified by the director, if deemed appropriate in his discretion.

Obstruction permit fee means money paid to the city by a permittee to cover the costs as provided in section 62-139.

Patch or *patching* means a method of pavement replacement that is temporary in nature. A patch consists of:

(1) The compaction of the subbase and aggregate base; and

(2) The replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit has the meaning given the term "right-of-way permit" in Minn. Stats. § 237.162.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this article.

Public right-of-way has the meaning given it in Minn. Stats. § 237.162, subd. 3.

Registrant means any person who:

(1) Has or seeks to have its equipment or facilities located in any right-of-way; or

(2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

Restore or *restoration* means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before the excavation.

Right-of-way permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by this article.

Right-of-way user means:

(1) A telecommunications right-of-way user as defined by Minn. Stats. § 237.162, subd. 4; or

(2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

Service or *utility service* means and includes:

(1) Services provided by a public utility as defined in Minn. Stats. § 216B.02, subds.

4 and 6;

(2) Services of a telecommunications right-of-way user, including transporting of voice or data information;

(3) Services of a cable communications system as defined in Minn. Stats. § 238.02, subd. 3;

(4) Natural gas or electric energy or telecommunications services provided by a local government unit;

(5) Services provided by a cooperative electric association organized under Minn. Stats. ch. 308A; and

(6) Water, sewer, steam, cooling or heating services.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunications or other voice or data information. For purposes of this article, a cable communications system defined and regulated under Minn. Stats. ch. 238, and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stats. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stats. chs. 453 and 453A, or a cooperative electric association organized under Minn. Stats. ch. 308A, are not telecommunications right-of-way users for purposes of this article.

Temporary surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

Trench means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

Two-year project plan shows projects adopted by the city for construction within the next two years.

(Ord. No. 11-2002, § 655.15, 7-21-2002)

Sec. 62-56. Severability.

If a regulatory body or a court of competent jurisdiction should determine by a final, nonappealable order that any permit, right or registration issued under this article or any portions of this article is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this article precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

(Ord. No. 11-2002, § 655.165, 7-21-2002)

Sec. 62-57. Findings, purpose, and intent.

(a) To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

(b) Accordingly, the city enacts the ordinance from which this article is derived relating to right-of-way permits and administration. This article imposes reasonable regulations on the placement and maintenance of facilities and equipment currently within the city's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under

this article, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(c) This article shall be interpreted consistently with Minn. Stats. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the Act) and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistent with Minn. Rules pts. 7819.0050—7819.9950 where possible. To the extent that any provision of this article cannot be interpreted consistently with the state rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

(Ord. No. 11-2002, § 655.05, 7-21-2002)

Sec. 62-58. Election to manage the public rights-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects pursuant to Minn. Stats. § 237.163, subd. 2(b), to manage rights-of-way within its jurisdiction.

(Ord. No. 11-2002, § 655.10, 7-21-2002)

Sec. 62-59. Reservation of regulatory and police powers.

A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

(Ord. No. 11-2002, § 655.160, 7-21-2002)

Sec. 62-60. Administration.

The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

(Ord. No. 11-2002, § 655.20, 7-21-2002)

Sec. 62-61. Utility coordination committee.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

(Ord. No. 11-2002, § 655.25, 7-21-2002)

Sec. 62-62. Right-of-way patching and restoration.

(a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under section 62-141.

(b) *Patch and restoration.* Permittee must patch its own work. The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or to restore the surface portion of right-of-way itself.

(1) *City restoration.* If the city restores the surface portion of the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance

bond in accordance with the provisions of Minn. Rules pt. 7819.3000.

(3) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

(c) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules pt. 7819.1100.

(d) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the city, permittee shall correct all restoration work to the extent necessary, using the method required by the city. Unless otherwise agreed to by the director, said work shall be completed within five calendar days of receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under section 62-141.

(e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure and shall allow the permittee ten days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the director. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Ord. No. 11-2002, § 655.65, 7-21-2002)

Sec. 62-63. Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules pts. 7819.1100, 7819.5000 and 7819.5100 and other applicable local requirements, in so far as they are not inconsistent with Minn. Stats. §§ 237.162 and 237.163.

(Ord. No. 11-2002, § 655.90, 7-21-2002)

Sec. 62-64. Mapping data.

Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minn. Rules pts. 7819.4000 and 7819.4100.

(Ord. No. 11-2002, § 655.115, 7-21-2002)

Sec. 62-65. Undergrounding.

(a) *Purpose.* The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster:

(1) Safe travel over the right-of-way;

(2) Nontravel related safety around homes and buildings where overhead feeds are connected; and

(3) Orderly development in the city.

Location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground must be made in accordance with this section. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including, but not limited to, Minn. Stats. §§ 161.45, 216B.36, 222.37, 237.162, 237.163, 238.084 and 300.03 and the Telecommunications Act of 1996, 47 USC 253.

(b) *Undergrounding—Facilities.* Facilities newly installed, constructed or otherwise placed in

the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this article and in accordance with applicable construction standards, subject to the exceptions in subsection (d) of this section. Aboveground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, reclosers and service connection pedestals shall be allowed. The requirements of this section shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

(c) *Same—Permanent replacement, relocated or reconstructed facilities.* If the city finds that one or more of the purposes set forth in subsection (a) of this section would be promoted, the city may require a permanent replacement, relocation or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this article, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with:

(1) The present or future use by the city or other local government unit of the right-of-way or other public ground for a public project;

(2) The public health or safety; or

(3) The safety and convenience of travel over the right-of-way.

(d) *Same—Exceptions.* The following exceptions to the strict application of this section shall be allowed upon the conditions stated:

(1) *Transmission lines.* Aboveground installation, construction, or placement of those facilities commonly referred to as "high voltage transmission lines" shall be allowed unless the Council requires undergrounding of the facilities after providing the right-of-way user notice and an opportunity to be heard. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.

(2) *Technical/economic feasibility; promotion of policy.* Aboveground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the Council, following consideration and recommendation by the Planning Commission, finds that:

a. Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights;

b. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement; or

c. Failure to promote the purposes of undergrounding. The right-of-way user clearly and convincingly demonstrates that none of the purposes under subsection (a) of this section would be advanced by underground placement of facilities on the project in question.

(3) *Temporary service.* Aboveground installation, construction, or placement of temporary service lines shall only be allowed:

a. During new construction of any project for a period not to exceed 24 months;

b. During an emergency in order to safeguard lives or property within the

city;

c. For a period of not more than seven months when soil conditions make excavation impractical.

(e) *Retirement of overhead facilities.* The City Council may determine whether it is in the public interest that all facilities within the city, or facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to subsection (b) of this section (new facilities) and subsection (d) of this section (replacement facilities). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected. (Two weeks' published; 30 days' written.) At the hearing the Council must consider the requirements of subsection (g) of this section and make findings. Undergrounding may not take place until the City Council has, after hearing and notice, adopted a plan that contains the requirements of subsection (h) of this section.

(f) *Public hearings.* A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under subsection (b) and (d) of this section.

(g) *Public hearing issues.* The issues to be addressed at the public hearings include, but are not limited to:

(1) The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way.

(2) The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities.

(3) The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city.

(4) Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

Upon completion of the hearing, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either citywide or within districts designated by the city.

(h) *Undergrounding plan.* If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the Council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

(1) Timetable for the undergrounding.

(2) Designation of districts for the undergrounding unless the undergrounding plan is citywide.

(3) Exceptions to the undergrounding requirement and procedure for establishing such exceptions.

(4) Procedures for the undergrounding process, including, but not limited to, coordination with city projects and provisions to ensure compliance with nondiscrimination requirements under the law.

(5) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility.

(6) Penalties or other remedies for failure to comply with the undergrounding.

(i) *Developer responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this section, and prior to final approval of any plat or development plan, shall submit to the director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for the installation of such facilities have been made.

(Ord. No. 11-2002, § 655.120, 7-21-2002)

Sec. 62-66. Location and relocation of facilities.

(a) *Compliance with state law, etc.* Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules pts. 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(1) *Relocation notification procedure.* The director shall notify the utility owner at least three months in advance of the need to relocate existing facilities so the owner can plan the relocation. The director shall provide a second notification to the owner one month before the owner needs to begin relocation. The utility owner shall begin relocation of the facilities within one month of the second notification. To the extent technically feasible, all utilities shall be relocated within one month or in a time frame determined by the director. The director may allow a different schedule if it does not interfere with the city's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

(2) *Delay to city project.* The director shall notify the utility owner if the owner's progress will not meet the relocation schedule. The city may charge the utility owner for all costs incurred and requested by a contractor working for the city who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the city due to the delay.

(3) *Joint trenching.* All facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in separate trenches.

(b) *Corridors.* The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A typical crossing section of the location for utilities may be on file at the director's office. This article is not intended to establish high density corridors. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city may remain at that location until the city requires facilities relocation to the corridor pursuant to relocation authority granted under Minn. Rules pt. 7819.3100 or other applicable law.

(c) *Limitation of space.* To protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(Ord. No. 11-2002, § 655.125, 7-21-2002)

Sec. 62-67. Pre-excavation facilities location.

In addition to complying with the requirements of Minn. Stats. §§ 216D.01—216D.09 (one call excavation notice system) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this article is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minn. Stats. §§ 216D.01, 216D.02. Any registrant whose facilities may be less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish and mark the exact horizontal and vertical location of its facility and the best procedure for excavation.

(Ord. No. 11-2002, § 655.130, 7-21-2002)

Sec. 62-68. Interference by other facilities.

When the city does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

(Ord. No. 11-2002, § 655.135, 7-21-2002)

Sec. 62-69. Right-of-way vacation; reservation of right.

If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules pt. 7819.3200.

(Ord. No. 11-2002, § 655.140, 7-21-2002)

Sec. 62-70. Abandoned facilities.

(a) *Discontinued operations.* A registrant who has decided to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant.

(b) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way pursuant to Minn. Rules pt. 7819.3300, unless the requirement is waived by the director.

(Ord. No. 11-2002, § 655.150, 7-21-2002)

Secs. 62-71—62-98. Reserved.

DIVISION 2. REGISTRATION

Sec. 62-99. Right-of-way occupancy; application; fee.

(a) *Required.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(b) *Prior to commencement of work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.

(c) *Exceptions.* Nothing in this article shall be construed to repeal or amend the provisions of a city ordinance establishing the rights of and limitations placed on persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or

satisfy any other requirements under this article for the following:

(1) Planting or maintaining boulevard plantings or gardens;

(2) Other surface landscaping works;

(3) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots, except repairs or restoration necessitated by utility cuts or other work;

(4) Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars;

(5) Snow removal activities;

(6) Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way.

(d) *Gopher One Call Law*. Nothing herein relieves a person from complying with the provisions of the Minn. Stats. ch. 216D, the Gopher One Call Law.

(Ord. No. 11-2002, § 655.30, 7-21-2002)

Sec. 62-100. Contents.

(a) *Required.* The information provided to the city at the time of registration shall include, but not be limited to:

(1) Each registrant's name, gopher one-call facility owner code number or other one-call identifier registration certificate number, if available, address and email address if applicable, and telephone and facsimile numbers.

(2) The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self insurance:

a. Verifying that an insurance policy has been issued to the registrant by an insurance company authorized to do business in the state, or a form of self insurance acceptable to the city;

b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

1. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and

2. Placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.

c. Either naming the city as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage or otherwise providing evidence satisfactory to the director that the city is fully covered and will be defended through registrant's insurance for all actions included in Minn. Rules pt. 7819.1250;

d. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article.

(4) The city may require a copy of the actual insurance policies if necessary to ensure the director that the policy provides adequate third party claim coverage and city indemnity and defense coverage for all actions included in the indemnity required by Minn. Rules pt. 7819.1250.

(5) Such evidence as the director may require that the person is authorized to do business in the state.

(b) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. No. 11-2002, § 655.35, 7-21-2002)

Sec. 62-101. Reporting obligations.

(a) *Operations.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city thereafter as soon as it is developed.

(1) The plan shall include, but not be limited to, the following information:

a. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a next-year project); and

b. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a five-year project).

(2) The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year and subject to Minn. Stats. ch. 13, the Minnesota Data Practices Act, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by March 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(b) *Additional next-year projects.* Notwithstanding subsection (a) of this section, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. No. 11-2002, § 655.40, 7-21-2002)

Sec. 62-102. Work done without a permit.

(a) *Emergency situations.* Each registrant shall immediately notify the director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions

it took in response to the emergency. If the director concludes that a registrant is required to perform work at the facility solely because of an emergency created by another registrant and the work is performed in the immediate area of the emergency work, the director may waive the permit otherwise required by the registrant called to the emergency created by another party. If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(b) *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount which shall be double the cost of an excavation permit as set forth in the adopted fee schedule, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this article.

(Ord. No. 11-2002, § 655.100, 7-21-2002; Ord. No. 02-2005, 1-30-2005)

Sec. 62-103. Indemnification and liability.

By registering with the city, or by accepting a permit under this article, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules pt. 7819.1250.

(Ord. No. 11-2002, § 655.145, 7-21-2002)

Secs. 62-104—62-134. Reserved.

DIVISION 3. PERMIT

Sec. 62-135. Required.

(a) *Types of right-of-way permits.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city or appropriate agency to do so.

(1) *Excavation.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) *Installation, repair, etc., to be obstruction permits.* Permits for installation, repair or otherwise work on aboveground facilities within the meaning of Minn. Stats. § 237.163, subd. 6(b)(4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.

(b) *Time extensions.* No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless:

(1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(c) *Delay penalty.* In accordance with Minn. Rules pt. 7819.1000, subd. 3, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement

weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(e) *Routine obstruction and excavation.* The director may approve a permit plan which, among other conditions, allows for routine excavations and obstructions without separate notice and separate compensation for such projects. Projects that do not involve the excavation of a paved surface and that last less than eight hours in duration may be included in such a plan.

(Ord. No. 11-2002, § 655.45, 7-21-2002)

Sec. 62-136. Applications.

(a) Application for a permit is made to the city. A right-of-way permit application shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the city pursuant to this article;

(2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the applicant;

(3) Payment of money due the city for:

a. Permit fees, estimated restoration costs and other management costs;

b. Prior obstructions or excavations;

c. Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.

(4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100 percent of the amount owing.

(b) Posting an additional or larger construction performance bond for additional facilities when the applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(Ord. No. 11-2002, § 655.50, 7-21-2002)

Sec. 62-137. Joint applications.

(a) *Registrants may jointly apply.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(c) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. No. 11-2002, § 655.70, 7-21-2002)

Sec. 62-138. Issuance; conditions.

(a) *Issuance.* If the applicant has satisfied the requirements of this article, the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit

and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

(c) *Screening.* The permittee shall screen all aboveground facilities as required by the director. Screening methods shall include the use of shrubs, trees and/or landscape rock or installation using stealth or camouflaged forms of the facility.

(Ord. No. 11-2002, § 655.55, 7-21-2002)

Sec. 62-139. Fees.

(a) *Schedule and allocation.* The city's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the city's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the city.

(b) *Excavation.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

(1) The city management costs;

(2) Degradation costs, if applicable.

(c) *Obstruction.* The city shall establish an obstruction permit fee and in an amount sufficient to recover the city management costs.

(d) *Payment.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow the applicant to pay such fees within 30 days of billing, or on some other payment plan agreed to by the director at his discretion.

(e) *Nonrefundable*. Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 62-145 are not refundable.

(f) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(Ord. No. 11-2002, § 655.60, 7-21-2002)

Sec. 62-140. Supplementary applications.

(a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

(1) Make application for a permit extension and pay any additional fees required thereby; and

(2) Be granted a new permit or permit extension.

(b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(Ord. No. 11-2002, § 655.75, 7-21-2002)

Sec. 62-141. Other obligations.

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all

requirements of local, state and federal laws, including Minn. Stats. §§ 216D.01—216D.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with, unless otherwise approved by the director. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(d) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and shall use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the state.

(Ord. No. 11-2002, § 655.80, 7-21-2002)

Sec. 62-142. Denial.

The city may deny a permit for failure to meet the requirements and conditions of this article or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

(Ord. No. 11-2002, § 655.85, 7-21-2002)

Sec. 62-143. Inspection.

(a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules pt. 7819.1300.

(b) *Site inspection.* Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of director.*

(1) At the time of inspection the director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(2) The director may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a substantial breach within the meaning of Minn. Stats. § 237.163, subd. 4(c), the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been corrected within the time period set forth by the director in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the director may revoke the permit pursuant to section 62-145.

(Ord. No. 11-2002, § 655.95, 7-21-2002)

Sec. 62-144. Supplementary notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. No. 11-2002, § 655.105, 7-21-2002)

Sec. 62-145. Revocation of permits.

(a) *Substantial breach.* The city reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 62-143(c)(2).

(b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to notice of breach.* Within a time established by the director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(d) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. No. 11-2002, § 655.110, 7-21-2002)

Sec. 62-146. Appeal.

(a) A right-of-way user that:

(1) Has been denied registration;

(2) Has been denied a permit;

(3) Has had permit revoked; or

(4) Believes that the fees imposed are not in conformity with Minn. Stats. § 237.163, subd. 6;

may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council.

(b) The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. No. 11-2002, § 655.155, 7-21-2002)

Chapter 66

TELECOMMUNICATIONS

ARTICLE I. IN GENERAL

Secs. 66-1—66-18. Reserved.

ARTICLE II. CABLE TELEVISION SYSTEMS*

***State law reference—**Municipal regulation of cable television, Minn. Stats. ch. 238.

DIVISION 1. GENERALLY

Sec. 66-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicable laws means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

Basic cable service means any service tier which includes the retransmission of local television broadcast signals. The term "basic cable service" as defined herein shall not be inconsistent with 47 USC 543(b)(7)(1993).

Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 USC 521-611 (1982 & Supp. V 1987)) as amended by the cable television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

Cable service means:

(1) The one-way transmission to subscribers of:

a. Video programming; or

b. Other programming service; and

(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable television system, system or *cable system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public rights-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201—226, except that such facility shall be considered a cable system (other than for purposes of 47 USC 541) to the

extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with section 653 of the Cable Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility system.

Channel or *cable channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

Franchise means an initial authorization, or renewal thereof, issued by the city, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system over publicly owned rights-of-way.

Franchise agreement means a franchise granted pursuant to this article containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

Franchise fee.

(1) The term "franchise fee" means any tax, fee or assessment of any kind imposed by the city or any other governmental authority on a grantee or cable subscriber, or both, solely because of their status as such.

(2) The term "franchise fee" does not mean or include:

a. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

b. Capital costs which are required by the franchise agreement to be incurred by the grantee for PEG access facilities;

c. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

d. Any fee imposed under title 17 of the United States Code.

Governmental authority means any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

Grantee means any person receiving a franchise pursuant to this article and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

Grantor or *city* means the city as represented by the Council or any delegate acting within the scope of its jurisdiction. The City Manager shall be responsible for the continuing administration of the franchise.

Gross revenues means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example, but not limitation, revenues from Basic Cable Service, all Cable Service fees,

premium, pay-per-view, pay television, late fees, guides, home shopping revenue, installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees and any and all other revenue derived by the Grantee from the operation of Grantee's Cable System to provide Cable Services in the City. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any affiliated entity where that affiliated entity receives revenue from the operation of the Cable System to provide Cable Services in the Service Area. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. "Gross Revenues" shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an affiliated entity that represent a transfer of funds between the Grantee and the affiliated entity, and that would otherwise constitute Gross Revenues of both the Grantee and the affiliated entity, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an affiliated entity and which may otherwise constitute revenue of the affiliated entity, shall not constitute additional Gross Revenues for purposes of the Franchise. "Gross Revenues" shall not include any taxes, fees, or assessments of general applicability imposed or assessed by any Governmental Authority. A Franchise Fee is not such a tax, fee, or assessment. The City acknowledges and accepts that Grantee shall maintain it s books and records in accordance with GAAP.

Initial service area means the area of the city which will receive cable service initially, as set forth in any franchise agreement.

Installation means the connection of the system to a subscriber and the provision of cable service.

Normal business hours means those hours during which most similar businesses in the city are open to serve customers. In all cases, the term "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

Person means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

Public, educational or government access facilities or *PEG access facilities* means:

(1) Channel capacity designated for public, educational or governmental use; and

(2) Facilities and equipment for the use of such channel capacity.

Section means any section, subsection or provision of this article.

Service area or *franchise area* means the entire geographic area within the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise agreement.

Service interruption means the loss of picture or sound on one or more cable channels.

Street or *publicly owned right-of-way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits:

(1) Streets;

(2) Roadways;

(3) Highways;

(4) Avenues;

(5) Lanes;

(6) Alleys;

(7) Sidewalks;

(8) Easements;

(9) Rights-of-way; and

(10) Similar public property and areas;

that the grantor shall permit to be included within the definition of street from time to time.

Subscriber means any person who or which lawfully elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable system whether or not a fee is paid for such service.

(Ord. No. 99-1998, § 1100.10, 6-23-1998; Ord. No. 11-2013, 12-22-13)

Sec. 66-20. Franchise renewal.

Franchise renewals shall be in accordance with applicable laws. The grantor and the grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. To the extent consistent with applicable laws, a reasonable nonrefundable renewal application fee in an amount established by the city may be required to accompany any renewal application. Such application fee shall not be deemed to be franchise fees within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be:

(1) Payments in kind or any involuntary payments chargeable against the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement; or

(2) Part of the franchise fees to be paid to the city by the grantee pursuant to section 66-68 hereof and applicable provisions of a franchise agreement.

(Ord. No. 99-1998, § 1100.85, 6-23-1998)

Sec. 66-21. Intent.

(a) The city, pursuant to applicable laws, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

(b) The City Council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable television, the City Council

further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this article and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this article shall be deemed to include this finding as an integral part thereof.

(Ord. No. 99-1998, § 1100.05, 6-23-1998)

Sec. 66-22. Federal, state and city jurisdiction.

(a) This article shall be construed in a manner consistent with applicable laws.

(b) This article shall apply to all franchises granted or renewed after the effective date of the ordinance from which this article is derived. This article shall further apply to the extent permitted by applicable laws to all existing franchises granted prior to the effective date of this article.

(c) The rights of all the grantees are subject to the policing powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All the grantees shall comply with all applicable laws enacted by the city pursuant to that power.

(d) No grantee shall be relieved of its obligation to comply with any of the provisions of this article or any franchise granted pursuant to this article by reason of any failure of the city to enforce prompt compliance.

(e) This article and any franchise granted pursuant to this article shall be construed and enforced in accordance with the substantive laws of the city, state and applicable federal laws, including the Cable Act.

(f) This article together with any franchise granted hereunder shall comply with the franchise standards contained in Minn. Stats. § 238.084.

(g) The grantee and the city shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable communications as they become effective.

(Ord. No. 99-1998, § 1100.35, 6-23-1998)

Sec. 66-23. Emergency use.

In the case of any emergency or disaster, the grantee shall, upon request of the city or emergency management personnel, make its cable system and related facilities available to the city for emergency use.

(Ord. No. 99-1998, § 1100.55, 6-23-1998)

Sec. 66-24. Geographical coverage.

(a) The grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the service area, subject to any service area line extension requirements of the franchise agreement.

(b) After service has been established by activating trunk and/or distribution cables for any service area, the grantee shall provide cable service to any requesting subscriber within that service area within 30 days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such 30-day period on reasonable terms and conditions.

(c) No subscriber shall be refused service arbitrarily. However, for unusual circumstances such as the existence of more than 150 feet of distance from distribution cable to

connection of service to subscribers, or a density equivalent of less than 40 homes per mile, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the grantee and subscribers in the area in which service may be expanded, the grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile, and whose denominator equals 40 residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

(d) The grantee shall immediately bury all drops to subscribers dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, the grantee shall be permitted to delay such burial until the ground becomes suitable for burial and shall complete said burial no later than June 1 of each year.

(Ord. No. 99-1998, § 1100.60, 6-23-1998)

Sec. 66-25. Consumer protection and service standards.

(a) *Responsibilities of grantee.* The grantee shall maintain a convenient local customer service or bill payment location for receiving subscriber payments. The grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having subscriber equipment picked up at the subscriber residence free of charge. The grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

(1) *Office hours and telephone availability.* The cable system office hours and telephone availability is as follows:

a. The grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

1. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.

2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.

b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less then 90 percent of the time under normal operating conditions, measured on a quarterly basis.

c. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

d. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.

e. Customer service center and bill payment locations will be open at least during normal business hours.

(2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis:

a. Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system. The grantee has agreed to 150 feet at section 66-24(c).

b. Excluding conditions beyond the control of the grantee, the grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.

c. The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

d. The grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If the grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) *Communications between grantee and subscribers.* The communications between the grantee and subscribers is as follows:

a. *Notifications to subscribers.* Notifications to subscribers is as follows:

1. The grantee shall provide written information on each of the following areas at the time of installations of service, at least annually to all subscribers, and at any time upon request:

(i) Products and services offered;

(ii) Prices and options for programming services and conditions of subscription to programming and other services;

(iii) Installation and service maintenance policies;

(iv) Instructions on how to use the cable service;

(v) Channel positions of the programming carried on the system; and

(vi) Billing and complaint procedures, including the address and telephone number of the grantee's office within the service area.

2. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the changes are within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by subsection (a)(3)a.1 of this section. The grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the subscriber.

b. *Billing.* The billing is as follows:

1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

2. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days.

c. *Refunds.* Refund checks will be issued promptly, but no later than either of the following:

1. The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or

2. The return of the equipment supplied by the grantee if service is terminated.

d. *Credits.* Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(b) *Quarterly compliance report.* The grantee shall provide the city with a quarterly customer service compliance report specific to the system serving the city in a form mutually agreed to, which report shall, at a minimum, describe in detail the grantee's compliance with each and every term and provision of this section and any additional customer service requirements contained in the grantee's franchise and shall outline and summarize all subscriber complaints received by the grantee during the preceding calendar quarter.

(Ord. No. 99-1998, § 1100.90, 6-23-1998)

Sec. 66-26. Rate regulation.

The city reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent not prohibited by applicable laws. The grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 CFR, pt. 76, subpt. N, as the same may be amended from time to time. The city shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR, pt. 76, subpt. N, as the same may be amended from time to time.

(Ord. No. 99-1998, § 1100.95, 6-23-1998)

Sec. 66-27. Design and construction requirements.

(a) The grantee shall not construct any cable system facilities until the grantee has secured the necessary permits from the grantor, or other applicable governmental authorities.

(b) In those areas of the city where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(c) In those areas of the city where the grantee's cables are located on the aboveground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at the grantee's cost. Certain of the grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in aboveground closures, however, the city specifically reserves all of its rights to approve aboveground or underground locations for pedestals subject to applicable laws.

(d) In new residential developments in which all the electric power and telephone utilities are underground, the city may, in its sole discretion, require that the following procedure apply with respect to access to and utilization of underground easements:

(1) The developer shall be responsible for contacting and surveying all the grantees to ascertain which the grantees desire (or, pursuant to the terms and provisions of this article and any franchise agreement, may be required) to provide cable service to that development. The developer may establish a reasonable deadline to receive responses from the grantees. The final development map shall indicate the grantees which have agreed to serve the development.

(2) If one or more grantees wish to provide service within all or part of the development, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two grantees indicate interest, the developer shall provide conduit to accommodate a minimum of two sets of cable television cables and dedicate to the city any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that grantor subsequently leases or sells occupancy or use rights to any grantee.

(3) The developer shall provide at least ten business days notice of the date that utility trenches will be open to the grantees that have agreed to serve the development. When the trenches are open, such grantees shall have two business days to begin the installation of their cables, and five business days after beginning installation to complete installation.

(4) The final development map shall not be approved until the developer submits evidence that:

a. It has notified each grantee that underground utility trenches are to open as of an estimated date, and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the grantee, or has received no reply from a grantee within ten days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

(5) Sharing the joint utilities trench shall be subject to compliance with state regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating grantees. With the concurrence of the developer, the affected utilities and the grantees, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to the requirements of applicable laws.

(6) Any grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.

(e) Construction codes and permits.

(1) The grantee shall obtain all necessary permits from city before commencing any construction upgrade or extension of the system, including the opening or disturbance of any street, or private or public property within city. The grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in city and give due consideration at all times to the aesthetics of the property.

(2) The city shall have the right to inspect all construction or installation work performed pursuant to the provisions of the franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the franchise and applicable provisions of local, state and federal law.

(f) Repair of streets and property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly and fully restored by the grantee, at its expense, to a condition as good as that prevailing prior to the grantee's work, as approved by city in the case of streets and other public property. If the grantee shall fail to promptly perform the restoration required herein, city shall have the right to put the streets, public, or private property back into good condition. The city reserves its rights to pursue reimbursement for such restoration from the grantee.

(g) Conditions on street use.

(1) Nothing in this franchise shall be construed to prevent the city from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(2) All system transmission and distribution structures, lines and equipment erected by the grantee within city shall be located so as not to obstruct or interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The grantee shall furnish to and file with City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and the grantee shall file with city updates of such maps, plats and permanent records annually if changes have been made in the system.

(3) If at any time during the period of this franchise city shall elect to alter, or change the grade or location of any street, alley or other public way, the grantee shall, at its own expense, upon reasonable notice by city, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system, and in each instance comply with the standards and specifications of city. If the city reimburses other occupants of the street, the grantee shall be likewise reimbursed.

(4) The grantee shall not place poles, conduits, or other fixtures of system above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any street shall be so placed as to comply with all requirements of city.

(5) The grantee shall, on request of any person holding a moving permit issued by city, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the grantee shall be given not less than ten days' advance notice to arrange for such temporary changes.

(Ord. No. 99-1998, § 1100.105, 6-23-1998)

Sec. 66-28. Technical standards.

(a) The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a copy of the results of the grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.

(b) Failure to comply with the FCC's technical standards shall entitle the city to utilize the procedures of section 66-75 hereof.

(c) All construction practices shall be in accordance with all applicable sections of

the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable laws.

(d) All installation of electronic equipment at the time of installation shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code.

(e) Antennas and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable laws.

(f) All of the grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the city may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(g) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(Ord. No. 99-1998, § 1100.110, 6-23-1998)

Sec. 66-29. Trimming of trees.

The grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over streets and public places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by the grantee.

(Ord. No. 99-1998, § 1100.115, 6-23-1998)

Sec. 66-30. Use of grantee facilities.

The city shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits of the grantee, any wires and fixtures desired by the city to the extent that such installation and maintenance does not interfere with existing operations of the grantee.

(Ord. No. 99-1998, § 1100.120, 6-23-1998)

Sec. 66-31. Programming decisions.

All programming decisions shall be at the sole discretion of the grantee; provided, however, that any change in the mix, quality or level of service pursuant to 47 USC 545(a) shall require the prior approval of the city. Such approval by the city shall not be unreasonably withheld.

(Ord. No. 99-1998, § 1100.125, 6-23-1998)

Sec. 66-32. Indemnification.

The grantee shall indemnify, defend and hold the city, its officers, boards, commissions, agents and employees (collectively the indemnified parties) harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs of any nature that any of the indemnified parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a franchise to the grantee, the operation of

the grantee's system and/or the acts and/or omissions of the grantee or its agents or employees, whether or not pursuant to the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this article or any franchise agreement, but shall exclude any claim or action arising out of the acts or omissions of the indemnified parties or related to any city programming or other access programming for which the grantee is not legally responsible.

(Ord. No. 99-1998, § 1100.130, 6-23-1998)

Sec. 66-33. Insurance.

Within 60 days following the grant of a franchise, the grantee shall obtain, pay all premiums for and make available to the city at its request copies of the following insurance policies:

(1) A general comprehensive liability insurance policy insuring, indemnifying, defending and saving harmless the indemnified parties from any and all claims by any person whatsoever on account of injury to or death of a person occasioned by the operations of the grantee under any franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of $1,000,000.00 for personal injury or death of one person, and $3,000,000.00 for personal injury or death of any two or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the city as necessary not more than once every three years.

(2) Property damage insurance for property damage occasioned by the operation of the grantee under any franchise granted pursuant to this article, or alleged to have been so caused or occurred, with minimum coverage of $1,000,000.00 for property damage to the property of any one person and $3,000,000.00 for property damage to the property of two or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the city as necessary not more than once every three years.

(3) Workers compensation insurance as provided by applicable laws.

(4) All insurance policies called for herein shall be in a form satisfactory to the city with a company licensed to do business in the state with a rating by A.M. Best and Co. of not less than "A," and shall require 30 days' written notice of any cancellation to both the city and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the city, written evidence of the issuance of replacement policies within 30 days following receipt by the city or the grantee of any notice of cancellation.

(5) If the grantee sells or transfers the cable system, or in the event of expiration, termination or revocation of a franchise, insurance tail coverage shall be purchased and filed with the city for the then applicable amounts, providing coverage for the time periods according to applicable statutes of limitation, insurance for any issues attributable to the period the grantee held its franchise.

(6) It shall be the obligation of the grantee to promptly notify the city of any pending or threatened litigation that would be likely to affect the

indemnified parties.

(Ord. No. 99-1998, § 1100.135, 6-23-1998)

Sec. 66-34. Records required and grantor's right to inspect.

(a) The grantee shall at all times maintain the following records and information relating specifically to the cable system serving the city as identified by the FCC community unit identifier (CUID) as opposed to a regional cable system or other operating unit of the grantee:

(1) A full and complete set of plans, records and as-built drawings and/or maps in an electronic form agreed to by the city and the grantee which shall be updated annually showing the location of the cable television system installed or in use in the city, exclusive of subscriber service drops and equipment provided in the subscribers' homes.

(2) If requested by the grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within 30 days following its request in a form reasonably acceptable to the grantor.

(b) Upon reasonable notice, and during normal business hours, the grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenant property and facilities of the grantee situated within or without the city, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under applicable laws, this article and the franchise agreement. The grantee shall have the right to be present at any such examination.

(c) The city shall also have the right to inspect, upon 24 hours' written notice, at any time during normal business hours at the grantee's office, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of the grantee.

(d) Copies of all petitions, applications, communications and reports submitted by the grantee or on behalf of or relating to the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this article and any franchise shall, upon request, be submitted, upon request to the city. Copies of responses from the governmental authority to the grantee shall likewise be furnished to the city.

(Ord. No. 99-1998, § 1100.140, 6-23-1998)

Sec. 66-35. Annual reports.

(a) The grantee shall, upon request, within 90 days of each calendar year end, submit a written end of the year report to the grantor with respect to the preceding calendar year containing the following information:

(1) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services commenced or discontinued during the reporting year;

(2) A list of the grantee's officers, members of its board of directors, and other principals of the grantee;

(3) A list of stockholders or other equity investors holding five percent or more of the voting interest in the grantee; and

(4) Information as to the number of subscribers, additional television outlets, and the number of basic and pay service subscribers.

(b) All reports required under this article, except those required by law to be kept confidential, shall be available for public inspection in the grantee's offices during normal business hours.

(c) All reports and records required under this article shall be furnished at the sole expense of the grantee, except as otherwise provided in this article or the franchise agreement.

(Ord. No. 99-1998, § 1100.145, 6-23-1998)

Sec. 66-36. Abandonment or removal of franchise property.

(a) In the event that the use of any property of the grantee within the franchise area or a portion thereof is discontinued for a continuous period of 12 months, the grantee shall be deemed to have abandoned that property.

(b) The grantor, upon such terms as the grantor may impose, may give the grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained in, on, under or over the franchise area. Unless such permission is granted or unless otherwise provided in this article, the grantee shall remove all abandoned facilities and equipment upon receipt of written notice from the grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation made by or on behalf of the grantee and shall leave all streets and other public ways and places in as good a condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article and any security fund provided for in the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.

(c) Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor a bill of sale and/or other instrument, satisfactory in form and content to the grantor, transferring to the grantor the ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the franchise agreement, in any such case without renewal, extension or transfer, the grantor shall have the right to require the grantee to remove, at its own expense, all aboveground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than 180 days.

(e) Notwithstanding anything to the contrary set forth in this article, the grantee may, with the consent of the grantor, abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

(Ord. No. 99-1998, § 1100.160, 6-23-1998)

Sec. 66-37. Rights of individuals.

(a) The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, disability,

national origin, age, gender or sexual preference. The grantee shall comply at all times with all other applicable laws, relating to nondiscrimination.

(b) The grantee shall adhere to the applicable equal employment opportunity requirements of applicable laws, as now written or as amended from time to time including 47 USC 551, protection of subscriber privacy.

(c) Neither the grantee, nor any person shall, without the subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, the grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable laws. The grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(e) No cable line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be installed by the grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed. Where a property owner or his predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as the grantee's intended use, the grantee shall not be required to service the written permission of the owner for the installation of cable television equipment.

(f) No signals of a class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, the lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers may be sold or otherwise made available to any person other than to the grantee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the grantee has received specific written authorization from the subscriber to make the data available.

(2) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to the provisions of subsection (a) of this section.

(3) For purposes of this section, the term "class IV cable communications

channel" means a signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the system.

(Ord. No. 99-1998, § 1100.180, 6-23-1998)

Secs. 66-38—66-62. Reserved.

DIVISION 2. FRANCHISES

Sec. 66-63. Required.

It shall be unlawful for any person, other than the city unless specifically required by applicable laws, to construct, install or operate a cable television system in the city in, on, over, under, upon, along or across any street or publicly owned right-of-way without a franchise properly granted pursuant to the provisions of this article.

(Ord. No. 99-1998, § 1100.20, 6-23-1998)

Sec. 66-64. Purpose.

(a) A franchise granted by the city under the provisions of this article shall encompass the following purposes:

(1) To engage in the business of providing cable service, and such other lawful services as may be permitted by the city, to subscribers within the service area.

(2) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets within the service area.

(3) To maintain and operate said franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of cable services.

(4) To set forth the obligations of a grantee under the franchise agreement.

(b) Nothing contained in this article relieves a person from liability arising out of failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regrading or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(Ord. No. 99-1998, § 1100.15, 6-23-1998)

Sec. 66-65. Multiple franchises.

(a) The grantor may grant one or more franchises for a service area. The grantor may, in its sole discretion, limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations, such as:

(1) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.

(2) The impact on the city of having multiple franchises.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(4) The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed system for the duration of the franchise term.

(b) Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between the grantor and the grantee, and consistent with applicable laws.

(c) The city may, in its sole discretion, require developers of new residential housing with underground utilities to provide conduit to accommodate cables for a minimum of two cable systems in accordance with the provisions of section 66-27(d).

(d) The grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in the grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(e) Any additional franchise granted by the city to provide cable service in a part of the city in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower income residents.

(Ord. No. 99-1998, § 1100.70, 6-23-1998)

Sec. 66-66. Applications.

(a) Any person, other than the city unless specifically required by applicable laws, desiring an initial franchise for a cable television system shall file an application with the city. A reasonable nonrefundable application fee in an amount established by the city shall accompany the initial application. Such application fee shall not be deemed to be franchise fees within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be:

(1) Payments in kind or any involuntary payments chargeable against the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement; or

(2) Part of the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement.

(b) An application for an initial franchise for a cable television system shall be in a form reasonably acceptable to the grantor and shall contain, where applicable:

(1) A statement as to the proposed service area;

(2) A resume of prior history of the applicant, including the legal, technical and financial expertise of the applicant in the cable television field;

(3) A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation;

(4) The percentage ownership of the applicant of each of its partners, shareholders or other equity owners;

(5) A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such person;

(6) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;

(7) A current financial statement of the applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;

(8) Proposed construction and service schedule;

(9) Any additional information that the city deems applicable.

(Ord. No. 99-1998, § 1100.75, 6-23-1998)

Sec. 66-67. Consideration of initial applications.

(a) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make his recommendations respecting such application to the City Council.

(b) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within 30 days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted, and, if granted subject to what conditions. The Council may grant one or more initial franchises, or may decline to grant any franchise.

(Ord. No. 99-1998, § 1100.80, 6-23-1998)

Sec. 66-68. Fee.

(a) Following the issuance and acceptance of a franchise, the grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.

(b) The grantor, on an annual basis, shall be furnished a statement within 90 days of the close of the calendar year, certified by the company controller or chief financial officer, reflecting the total amounts of gross revenues and all payments, and computations of the franchise fee for the previous calendar year. Upon ten days' prior written notice, the grantor shall have the right to conduct an independent audit of the grantee's records. If such audit indicates a franchise fee underpayment of five percent or more, the grantee shall assume all of city's out-of-pocket costs associated with the conduct of such an audit and shall remit to the grantor all applicable franchise fees due and payable together with interest thereon at the lesser of the maximum rate permitted by applicable laws or 18 percent per annum.

(c) Except as otherwise provided by law, no acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this article or any franchise agreement or for the performance of any other obligation of the grantee.

(d) In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, the grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by applicable laws or 18 percent per annum during the period for which payment was due.

(e) The franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(Ord. No. 99-1998, § 1100.100, 6-23-1998)

Sec. 66-69. Term.

(a) A franchise granted hereunder shall be for the term established in the franchise agreement and shall not exceed 15 years.

(b) A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of this article and applicable laws.

(Ord. No. 99-1998, § 1100.25, 6-23-1998)

Sec. 66-70. Territory.

Any franchise granted pursuant to this article shall be valid within the service area.

(Ord. No. 99-1998, § 1100.30, 6-23-1998)

Sec. 66-71. Nontransferable.

(a) The grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the franchise and/or cable system or any of the rights or privileges granted by the franchise, without the prior written consent of the Council and then only upon such terms and conditions as may be prescribed by the Council with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the franchise and/or cable system or the grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the franchise pursuant to section 66-75 and the applicable provisions of any franchise agreement.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable system requiring compliance with this section:

(1) The sale, assignment or other transfer of all or a majority of the grantee's assets or the assets comprising the cable system to any person;

(2) The merger of the grantee or any of its parents with or into another person (including the merger of the grantee or any parent with or into any parent or subsidiary corporation or other person);

(3) The consolidation of the grantee or any of its parents with any other person;

(4) The creation of a subsidiary corporation or other entity;

(5) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in the grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in the grantee;

(6) The issuance of additional capital stock or partnership, membership or other equity interest by the grantee or any of its parents so as to create a new controlling interest in the grantee; and

(7) The entry by the grantee into an agreement with respect to the management or operation of the grantee, any of the grantee's parents and/or the system or the subsequent amendment thereof.

The term "controlling interest" as used herein is not limited to majority equity ownership of the grantee, but also includes actual working control over the grantee, any parent of the grantee and/or the system in whatever manner exercised.

(c) The grantee shall notify the grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the cable system of the grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by the grantor as notice that a change in control or ownership of the franchise has taken place and the provisions under this section governing the consent of the grantor to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the grantor may inquire into the qualifications of the prospective transferee or controlling party, and the grantee shall assist the grantor in any such inquiry. In seeking the grantor's consent to any change of ownership or control, the grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to the grantor, which application shall include the information required under this article and applicable laws. The transferee shall be required to establish to the satisfaction of the city that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the grantor finds that such transfer is acceptable, the grantor shall permit such transfer and assignment of the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such transfer shall not be unreasonably denied.

(e) Any financial institution having a security interest in any and all of the property and assets of the grantee as security for any loan made to the grantee or any of its affiliates for the construction and/or operation of the cable system must notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a default in the payment or performance of the debts, liabilities or obligations of the grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the system within 30 days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution or its designee exercises control over the system. The financial institution or its designee shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during said period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.

(f) In addition to the aforementioned requirements in this section, the city and the grantee shall, at all times, comply with the requirements of Minn. Stats. § 238.083 regarding the sale or transfer of a franchise and with all other applicable laws.

(Ord. No. 99-1998, § 1100.40, 6-23-1998)

Sec. 66-72. City's right to purchase system.

The city shall have a right of first refusal to purchase the cable system in the event the grantee receives a bona fide offer to purchase the cable system from any person. The term "bona fide offer," as used in this section, means a written offer which has been accepted by the grantee, subject to the city's rights under this article and any franchise agreement. The price to be paid by the city shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The city shall notify the grantee of its decision to purchase within 60 days of the city's receipt from the grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the city shall deem appropriate.

(Ord. No. 99-1998, § 1100.45, 6-23-1998)

Sec. 66-73. Purchase by city upon expiration or revocation.

Consistent with section 627 of the Cable Act and all other applicable laws, at the expiration, cancellation, revocation or termination of any franchise agreement, the city shall have the option to purchase, condemn or otherwise acquire and hold the cable system.

(Ord. No. 99-1998, § 1100.50, 6-23-1998)

Sec. 66-74. Nonexclusive.

Any franchise granted under this article shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system as it deems appropriate on terms and conditions no more favorable nor less burdensome than those imposed in previously granted franchises, subject to applicable laws. The grantor also specifically reserves the right to operate a municipal cable television system pursuant to applicable laws.

(Ord. No. 99-1998, § 1100.65, 6-23-1998)

Sec. 66-75. Violation of provisions.

(a) In the event the grantor believes that the grantee has breached or violated any material provision of this article or a franchise granted hereunder, the grantor may act in accordance with the procedures in subsection (b) of this section.

(b) The grantor may notify the grantee of the alleged violation or breach and demand that the grantee cure the same within a reasonable time, which shall not be less than ten days in the case of an alleged failure of the grantee to pay any sum or other amount due the grantor under this article or the grantee's franchise and 30 days in all other cases. If the grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the grantor shall then give written notice of not less than 14 days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the Council finds that a material violation or breach exists and that the grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure such violation or breach after notice thereof from the grantor and is not diligently proceeding to fully cure such violation or breach, the Council may impose penalties from any security fund required in a franchise agreement or may terminate the grantee's franchise and all rights and privileges of the franchise. If the city chooses to terminate the grantee's franchise, the following additional procedure shall be followed:

(1) The city shall provide the grantee with written notice of the city's intention to terminate the franchise and specify in detail the reason or cause for the proposed termination. The city shall allow the grantee a minimum of 15 days subsequent to receipt of the notice in which to cure the default.

(2) The grantee shall be provided with an opportunity to be heard at a regular or special meeting of city prior to any final decision of the city to terminate the grantee's franchise.

(3) In the event the city determines to terminate the grantee's franchise, the grantee shall have an opportunity to appeal said decision in accordance with all applicable laws.

(4) If a valid appeal is filed, the franchise shall remain in full force and affect while said appeal is pending, unless the term of the franchise sooner expires.

(Ord. No. 99-1998, § 1100.150, 6-23-1998)

Sec. 66-76. Force majeure; grantee's inability to perform.

In the event the grantee's performance of any of the terms, conditions or obligations required by this article or a franchise granted hereunder is prevented by a cause or event not within the grantee's control, such inability to perform shall be deemed excused for the period of such

inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of the grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

(Ord. No. 99-1998, § 1100.155, 6-23-1998)

Sec. 66-77. Extended operation and continuity of services.

Upon termination or forfeiture of a franchise, the grantee shall remove its cable, wires, and appliances from the streets, alleys, or other public places within the service area if the city so requests. Failure by the grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of section 66-36.

(Ord. No. 99-1998, § 1100.165, 6-23-1998)

Sec. 66-78. Receivership and foreclosure.

(a) A franchise granted hereunder shall, at the option of the grantor, cease and terminate 120 days after appointment of a receiver or receivers or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this article and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all the defaults and violations under the franchise and/or this article or provided a plan for the remedy of such defaults and violations which is satisfactory to the grantor; and

(2) Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise and this article.

(b) In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, the grantor may give notice of termination of any franchise granted pursuant to this article upon the grantee and the successful bidder at such sale, in which the event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after such notice has been given, unless:

(1) The grantor shall have approved the transfer of the franchise in accordance with the provisions of the franchise and this article; and

(2) Such successful bidder shall have covenanted and agreed with the grantor to assume and be bound by all terms and conditions of the franchise.

(Ord. No. 99-1998, § 1100.170, 6-23-1998)

Sec. 66-79. Rights reserved to grantor.

In addition to any rights specifically reserved to the grantor by this article, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

(Ord. No. 99-1998, § 1100.175, 6-23-1998)

Sec. 66-80. Severability.

If any provision of this article is held by any governmental authority of competent jurisdiction, to be invalid as conflicting with any applicable laws now or hereafter in effect, or is held by such governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this article, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such applicable laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on the grantor and the grantee, provided that the grantor shall give the grantee 30 days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for the grantee to comply with such provision.

(Ord. No. 99-1998, § 1100.185, 6-23-1998)

Chapter 70

TRAFFIC AND VEHICLES*

***State law reference—**Traffic generally, Minn. Stats. ch. 169; powers of local authorities, Minn. Stats. §§ 169.022, 169.04.

ARTICLE I. IN GENERAL

Sec. 70-1. Definitions.

Any term used in this chapter and defined in Minn. Stats. § 169.01 has the meaning given it by that statute.

(Code 1987, § 700.01)

Sec. 70-2. Penalty.

Any person convicted or violating any provision of this chapter is guilty of a petty misdemeanor.

(Code 1987, § 700.80)

Sec. 70-3. Establishment of safety zones, lanes of traffic, etc.

To assist in the direction and control of traffic, to improve safe driving conditions at any intersection or dangerous location, and to warn pedestrians or drivers of motor vehicles of dangerous conditions or hazards, the Chief of Police may establish safety zones, lanes of traffic, and stop intersections, and he may order installation by the city engineer of stop signs, yield signs, warning signs, signals, pavement markings, or other devices. No regulation may be established on a trunk highway unless the consent of the commissioner of transportation is first secured.

(Code 1987, § 700.50)

Sec. 70-4. Police duties.

The Police Department shall enforce the provisions of this chapter and the state traffic laws. Police officers are authorized to direct all traffic within the city, either in person or by means of visible or audible signal, in conformity with this chapter and the state traffic laws. During a fire or other emergency or to expedite traffic or safeguard pedestrians, officers of the Police Department may direct traffic as conditions require notwithstanding the provisions of this chapter and the state traffic laws. Officers of the Fire Department may direct or assist the police in directing traffic at the scene of a fire or in the immediate vicinity.

(Code 1987, § 700.75)

Sec. 70-5. Turning.

(a) *Restrictions on turns.* The Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where the turning of vehicles to the left or to the right or both, is to be restricted at all times or during specified hours. The city engineer shall mark by appropriate signs any intersection so designated. No intersection on a trunk highway shall be so designated until the consent of the commissioner of transportation to such designation is first obtained. No person shall turn a vehicle in any such intersection contrary to the directions of such signs.

(b) *U-turns.* The Council may, by resolution, designate streets or portions of streets on which no person shall turn a vehicle so as to reverse its direction.

(Code 1987, § 700.05)

Sec. 70-6. Through streets; one-way streets.

The Council by resolution, may designate any street or portion of street as a through highway or a one-way roadway where necessary to preserve the free flow of traffic or to prevent accidents. The city engineer shall post appropriate signs at the entrance of such street.

(Code 1987, § 700.10)

Sec. 70-7. Stop at sidewalks; driving on sidewalks.

(a) The driver of a vehicle within a business or residential district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area and shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk.

(b) No person shall ride or drive, except for crossing at an alley, driveway, building, or other authorized crossing, any motor vehicle, bicycle, motorcycle, motor scooter, motorized bicycle, skateboard, or other vehicle or device which is operated in a dangerous or hazardous manner upon any sidewalk within the limits of this municipality.

(Code 1987, § 700.11; Ord. No. 13-1988, 7-26-1988)

Sec. 70-8. Speed limit in school zones.

The Council by resolution may establish school speed limit zones. Upon the erection of appropriate signs designating the beginning and ending of such speed limit zones, no person shall drive a vehicle within the zones designated by this chapter in excess of 20 miles per hour when children are present, going to or leaving school during opening or closing hours or during school recess periods.

(Code 1987, § 700.15)

Sec. 70-9. Truck restrictions.

The City Council by resolution may designate streets on which travel by commercial vehicles in excess of 18,000 pounds gross weight per single axle and 9,000 pounds per single wheel is prohibited. The city engineer shall erect appropriate signs on such streets. No person shall operate a commercial vehicle on such posted streets in violation of the restrictions stated. In the case of vehicles not equipped with pneumatic tires, the foregoing weight restrictions shall be reduced by 40 percent.

(Code 1987, § 700.20)

Sec. 70-10. Seasonal weight restrictions.

The city engineer or designee may prohibit the operation of vehicles upon any street under his jurisdiction or impose weight restrictions on vehicles to be operated on such street whenever the street, by reason of deterioration, rain, snow, or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles on the street is prohibited or the permissible weights thereof reduced. He shall erect and maintain signs plainly indicating the prohibition or restriction in the manner required by law. This prohibition or restriction shall be effective from March 15 through May 15 of every year, and for such other periods as the city engineer or designee shall determine necessary and appropriate. No person shall operate a vehicle on a posted street in violation of the prohibition or restriction. The operator of a vehicle that has been lawfully detained may be required by an officer, or his designee, to submit the vehicle and load to a weighing by means of portable or stationary scales.

(Code 1987, § 700.25; Ord. No. 03-2002, 2-24-2002; Ord. No. 04-2005, 3-20-2005)

Sec. 70-11. Removing keys.

No person shall leave a motor vehicle, except a truck which is engaged in loading or unloading, unattended on any street, used car lot, or unattended parking lot without first sto pping the engine, locking the ignition,and removing all ignition keys from the vehicle.
(Code 1987, § 700.55)

Sec. 70-12. Exhibition driving prohibited.

No person shall turn, accelerate, decelerate, or otherwise operate a motor vehicle within the city in a manner which causes unnecessary engine noise or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race. Unreasonable squealing or screeching sounds emitted by tires, or the throwing of sand and or gravel by the tires, is prima facie evidence of a violation of this article.

(Code 1987, § 700.60)

Sec. 70-13. Careless driving off highway.

No person shall drive any vehicle in such a manner on any public or private grounds or parking lot or on the frozen surface of any body of water within the limits of the harbor limit, adjacent to the limits of the harbor limit, or adjacent to the limits of the city so as to indicate a disregard for the safety of persons or property.

(Code 1987, § 700.65)

Sec. 70-14. Driving in parks, commons, and unopened street and alley rights of way.

Unless otherwise posted; no person shall drive or operate unauthorized motor vehicles in any public park, commons, unopened street or alley rights-of-way except on improved roads, trails, or designated lake accesses or parking areas as they may exist. Light utility off-road vehicles (UTV), all terrain vehicles (ATV) and snow mobiles may access areas designated "traversable" for access to the lake and dock use areas for recreational or maintenance purposes. Operation of general purpose, road, motor vehicles on commons or unopened street or alley rights-of-way for shoreland construction or improvement access requires a Public Lands Permit, as described in Chapter 62-11 and any other additional permitting.

(Code 1987, § 700.70; Ord. No. 25-2006, 12-24-2006; Ord. No. 06-2015, 11-22-2015)

Secs. 70-15—70-31. Reserved.

ARTICLE II. STOPPING, STANDING AND PARKING*

***State law reference—**Authority to regulate standing or parking of vehicles, Minn. Stats. § 169.04(1); stopping, standing and parking, Minn. Stats. § 169.32 et seq.

Sec. 70-32. Parking restrictions.

(a) *Angle and parallel parking.* The City Council may by resolution designate streets where angle parking is required. On any such street, every vehicle parked shall be parked with the front of the vehicle facing the curb or the edge of the travel portion of the street at an angle of approximately 60 degrees and facing between the painted or other markings on the curb or street indicating the parking space. On all other streets, cars shall be parked parallel to the curb or edge of the roadway in accordance with law. Every vehicle when parked where parking spaces are marked shall be parked in a single space marked for vehicle parking by painted lines on the street or curb, and no part of the vehicle shall extend into any other marked space.

(b) *No parking, stopping, or standing zones.* The City Council may, by resolution, designate certain streets or portions of streets as taxistands, or no parking or no stopping or standing zones, and may limit the hours in which the restrictions apply. The city engineer shall mark by appropriate signs each zone so designated. Except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device, no person shall stop or park a vehicle in an established no stopping or standing zone when stopping or standing is prohibited. No vehicle shall be parked in a no parking zone during hours when parking is prohibited except that a vehicle may be parked temporarily in such zone for the purpose of forming a funeral procession and a truck may be parked temporarily between the hours of 6:30 a.m. and 6:00 p.m. of any business day for the purpose of loading or unloading where access to the premises is not otherwise available.

(c) *Time limit parking zones.* The City Council may, by resolution, designate certain areas where the right to park is limited during hours specified. The city engineer shall mark by appropriate signs each zone so designated. During the hours specified on the sign, no person shall park a vehicle in any limited parking zone for a longer period than is so specified.

(d) *General time limit.* No vehicle shall be parking for more than 30 minutes between 2:00 a.m. and 6:00 a.m.; and no vehicle shall in any case be parked upon any street in any one place for a longer continuous period than 24 hours.

(e) *Impoundment.* Any police officer may remove a vehicle from a street to a garage or other place of safety when the vehicle is left unattended and constitutes an obstruction to traffic or hinders snow removal or street improvement or maintenance operations. Such vehicle shall not be released until the fees for towing and storage are paid in addition to any fine imposed for violation of this article.

(f) *Establishment of fire lanes.* The Council upon report and recommendation of the City Manager and Fire Chief may order the establishment of fire lanes on public or private property as may be necessary in order that the travel of fire equipment may not be interfered with, and that access to fire hydrants or buildings may be obstructed. When a fire lane has been ordered to be established pursuant to this article, a sign bearing the words "No Parking - Fire Lane" or a similar message shall be placed designating the restricted area. When the fire lane is on public property or a public right-of-way, the sign or signs shall be erected by the city, and when on private property, they shall be erected by the owner at his own expense within 30 days after he has been notified of the order. After a sign or signs have been duly erected, no person shall park a vehicle or otherwise occupy or obstruct the fire lane.

(g) *Parking to display vehicle or property for sale.* No vehicle shall be parked on any city-owned parking lot, parking lot participating in the CBD parking program, or other public property other than streets for the purpose of displaying it, or any property contained on or in it, for sale. No person shall park, nor shall the land owner allow to be parked, more than one vehicle on private property, whether residential, commercial, industrial, or other in the city for the purpose of such display. This restriction does not apply to businesses holding licenses or permits from the city that allow such display.

(h) *Prima facie violation.* The presence of any motor vehicle on any street when standing or parking in violation of this Code is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

(Code 1987, § 700.30; Ord. No. 112-2000, 10-8-2000)

Sec. 70-33. Truck zones, loading zones, etc.

(a) *Establishment.* The City Council may by resolution establish spaces in streets as loading zones or truck zones. The hours of 7:00 a.m. to 9:00 p.m. of any day except Sunday, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day or such other time as the City Council may specify in the resolution establishing the zone shall be the loading zone or truck zone hours. The city engineer shall mark each such zone by appropriate signs.

(b) *Truck zone prohibitions.* During truck zone hours, no person shall stop, stand, or park any vehicle except a truck in a truck zone. No person shall stop, stand, or park a truck in a truck zone during truck zone hours except to receive or discharge passengers or freight and then only for a period no longer than is necessary for the purpose.

(c) *Loading zone prohibitions.* During loading zone hours, no person shall stop, stand or park any vehicle in a loading zone except to receive or discharge passengers or freight and then only for a period no longer than is necessary for the purpose. No person shall occupy a loading zone with a vehicle other than a truck for more than five minutes during such hours.

(d) *Property owner initiative.* Any person desiring the establishment of a loading zone or truck zone abutting premises occupied by him shall make written application therefor to the City Council. If the Council grants the request, the proper city officer shall bill the applicant for the estimated cost of placing signs and of painting the curb. When the amount is paid to the Finance Director, the Chief of Police shall install the necessary signs and paint the curb.

(e) *Semitrailer parking.* No person shall allow a semitrailer to stand or be parked unattached from a tractor unit for any length of time on any street in the city except in an emergency in order to change tractors.

(f) *No truck parking zones.* The Council may by resolution establish no truck parking zones, and the city engineer shall mark by appropriate signs any zones so established. Such zones shall be established where heavy traffic by trucks or other traffic congestion makes parking by trucks a hazard to the safety of vehicles or pedestrians. No person shall park a truck of more than one ton capacity between 7:00 a.m. and 6:00 p.m. on any week day upon any street in any such zone, but parking of such vehicle for a period of not more than 30 minutes shall be permitted in such zone for the purpose of having access to abutting property when such access cannot conveniently be secured otherwise.

(Code 1987, § 700.35)

Sec. 70-34. Bus stops and taxistands.

(a) *Designation.* The City Council by resolution may designate spaces on streets in the city where vehicles engaged in carrying passengers for hire shall stand or park. The Chief of Police shall mark by appropriate sign any bus stop or taxistand so established.

(b) *Parking restrictions.* Except for the purpose of loading or unloading passengers, no driver of any vehicle other than a bus shall stand or park at a bus stop and no driver of any vehicle other than a taxicab shall stand or park in a taxistand.

(c) *Bus and taxi parking.* No driver of any bus shall stand or park the bus upon any street except at a bus stop. Except for the purpose of loading or unloading passengers or for a reasonable time while on personal errands, no driver of any taxicab shall stand or park upon any street except at a taxistand.

(Code 1987, § 700.40)

Sec. 70-35. Winter parking.

(a) No person shall stop, stand, or park any vehicle or permit it to stand on any street between the hours of 2:00 a.m. and 6:00 a.m. from November 15 to April 15 in each succeeding year. Variances to this article may be granted by the Council in cases where abutting property owners cannot provide off-street parking in accordance with the provisions of this article and where other special circumstances exist which are beyond the owner's control, and conditions affect abutting property owners so that a strict application of the provisions of this article deprive the applicant of the reasonable use of his land. The Council may consider such things as:

(1) Topographic conditions;

(2) Nonconforming uses where limited public right-of-way and inability to get vehicles off the public street make it impossible for the owner to provide off-street parking;

(3) The effect the variance will have on public safety and the public welfare.

(b) All variances shall terminate on April 15 of each year and new application must be filed for the following year.

(Code 1987, § 700.45)

Secs. 70-36—70-58. Reserved.

ARTICLE III. SNOWMOBILES*

***State law reference—**Snowmobiles, Minn. Stats. § 84.81 et seq.; local snowmobile regulation, Minn. Stats. § 84.87.

Sec. 70-59. Definitions.

Any term used in this article and defined in Minn. Stats. § 84.81, has the meaning given to it by that section.

(Ord. No. 26-2006, § 705.05, 12-24-2006)

Sec. 70-60. Intent.

It is the intent of this article to supplement Minn. Stats. §§ 84.81—84.915, and Minn. Stats. chs. 168—171 with respect to the operation of snowmobiles. This article is not intended to allow what the state statutes prohibit, or to prohibit what the state statutes expressly allow.

(Ord. No. 26-2006, § 705.01, 12-24-2006)

Sec. 70-61. Drivers certificate.

No person between the ages of 14 and 18 years shall operate a snowmobile on a public street or highway or on any public land or ice covered public waters unless the operator shall have a valid snowmobile safety certificate issued by the state under Minn. Stats. § 84.86. No person under the age of 14 years shall operate a snowmobile on city streets, highways, public lands, or ice covered public waters.

(Ord. No. 26-2006, § 705.10, 12-24-2006)

Sec. 70-62. Lamps, brakes, mufflers, and safety throttle.

No snowmobile shall be operated on a public street or highway or on any public lands or ice covered public water unless it is equipped with the following:

(1) Standard mufflers which are properly attached and which reduce the noise of operation of the snowmobile to a noise level which shall not be a disturbance to residents of the area of operation, and no person shall use a muffler cut-out, by-pass, or similar device on said snowmobile.

(2) A safety or so-called "deadman" throttle in operating condition; the term "safety" or "deadman" throttle is defined as a device which, when pressure is removed from the accelerator or throttle, causes the motor to be disengaged from the driving track.

(Ord. No. 26-2006, § 705.15, 12-24-2006)

Sec. 70-63. Restrictions on operation.

It shall be unlawful for any person to drive or operate any snowmobile in the following ways:

(1) No snowmobile shall be driven within 100 feet of any fisherman, pedestrian, skating rink, or sliding area in excess of ten miles per hour.

(2) No snowmobile shall be driven in any area if the operation would conflict with or endanger other persons or property.

(3) No snowmobile shall be operated in any cemetery.

(4) No snowmobile shall be operated on private property of another without permission of the owner or lawful occupant of said property.

(5) No snowmobile shall be operated in a manner so as to create a loud, unnecessary, or unusual noise with disturbs, annoys, or interferes with the peace and quiet of other persons.

(6) No snowmobile shall be operated between the hours of 2:00 a.m. and 6:00 a.m. of each day on city streets, highways, roadways, and public lands that do not abut public waters.

(Ord. No. 26-2006, § 705.20, 12-24-2006)

Sec. 70-64. Unattended.

It is unlawful for the owner or operator of any snowmobile to leave or allow a snowmobile to be or remain unattended on public property while the motor is running or with the key to start said snowmobile in the ignition switch or if said snowmobile does not have an ignition switch which can be locked.
(Ord. No. 26-2006, § 705.25, 12-24-2006)

Chapter 74
UTILITIES

ARTICLE I. IN GENERAL

Secs. 74-1—74-18. Reserved.

ARTICLE II. FRANCHISE FEES

Sec. 74-19. Imposed.

The Franchise Ordinances and setting of Franchise Fees are found in Appendix A.

Secs. 74-20—74-43. Reserved.

ARTICLE III. WATER SYSTEM

DIVISION 1. GENERALLY

Sec. 74-44. Violations—Termination of service.

For a violation of any of the rules and for nonpayment of charges or violations of rules, water may be shut off and it will not be turned on again until all charges, penalties, and fines are paid together with the expense of shutting off and turning on of such water as established by the city, and the City Council may order that no water shall be furnished to any person who is indebted to the city on account of any such charges, penalties, or fines.

(Code 1987, § 610.60; Ord. No. 57-1992, 7-6-1992; Ord. No. 01-2001, 2-25-2001)

Sec. 74-45. Same—By plumbers.

For violation of the provisions of this article by plumbers or for the introduction either voluntarily or at the request of any consumer of any pipe or fixture for which a permit has not been granted by the city, the plumber shall forfeit and pay to the city a sum as established by the city, and any damages that may be sustained through loss of water fees, which may be recordable on his bond or direct action.

(Code 1987, § 610.65; Ord. No. 01-2001, 2-25-2001)

Sec. 74-46. Service contract.

The city reserves the right to make any such further rules and regulations and to change the rates from time to time as may be necessary for the preservation, protection, and proper operation of the water system. The rules, regulations, and water rates hereinafter to be named shall be considered a part of the contract with every person who are supplied with water through the water system of the city, and any persons, company, or corporation, by taking water, shall be considered to express their consent to be bound thereby; and whenever any of them or such others as may be hereafter duly adopted by the Council be violated, the water shall be shut off from the place of such violation, even though two or more parties are receiving water through the same pipe and shall not again be turned on except by order of the city and the payment of a penalty as provided in section 74-127.

(Code 1987, § 610.25)

Sec. 74-47. Service reservations and limitations.

The city reserves the right at any time to shut off the water for the purpose of extending, replacing, repairing, or cleaning mains and appurtenances, and the city shall not be held liable for any damage arising therefrom. No claim shall be made against the city by reason of breaking of any service pipe or connection.

(Code 1987, § 610.30)

Sec. 74-48. General regulations.

(a) *No unauthorized connection.* No person shall without authority from the city lay any mains or service or take water from the city supply.

(b) *No unauthorized usage.* No person, authorized to take water from any main or service pipe from any specified premises or specified purpose, shall without authority use such water for other than such specified purpose for such premises.

(c) *Interference with operation of water system.* No person shall willfully and without authority from the city injure or remove any property under the control of said city or interfere in any way with the operation, construction, or repairing of the waterworks.

(d) *Tampering with valves and hydrants.* No person shall unlawfully and without authority from the city operate any valve or hydrant.

(e) *Trespassing.* No person shall enter any building of said water system, unless authorized by the city to do so.

(f) *Connections performed only by registered plumber.* No persons other than duly registered plumbers will be allowed to do any work on the service pipes or fixtures connected with the water system, and only a duly registered plumber may make the connections from main to curb box.

(g) *Preservice inspections.* The water will not be turned on to any premises until the work is inspected and found to be in accordance with the rules and regulations.

(h) *Tampering with stopcocks.* No plumber shall turn on or off the water supply at any stopcock at main or curb box nor allow any person in his employ to do so, except for testing purposes and with the approval of the city.

(i) *No shared service connections.* Two or more services must not be connected together except upon special permission from the city.

(j) *Service to building front only.* Services must enter the front of the building nearest to the sidewalks wherever this is practicable.

(k) *Location of service branches.* No branches will be allowed to be connected to the service except on the house side of the meter.

(l) *Safety precautions during excavation.* Excavations for water service connections or repairs shall be done in such manner as to occasion the least inconvenience to the public. The trench shall be properly guarded at all times, and during the night warning lights shall be maintained at any excavation lying within the street lines. The provisions of this article are supplemental to, not in lieu of, all other requirements.

(m) *Water service outside of city.* The city is authorized to furnish water to places outside of the boundaries of the city under the same rules and regulations and at the same or greater rates as fixed for the consumption of water within the city, provided that such furnishing may not be detrimental to the supply of water within the city.

(n) *Temporary connections to hydrants.* The city may permit water to be used

temporarily from any fire hydrant by attaching a reducer to one of the hydrant openings and controlling the supply by means of a small valve.

(o) *Seasonal restrictions on lawn sprinkling.* From May 15 to September 1 of each year, an odd/even lawn sprinkling regulation shall be in effect for all lawn sprinkling systems supplied by water from the city. Properties with even-numbered addresses may sprinkle lawns only on days with even-numbered dates. Properties with odd-numbered addresses may sprinkle only on days with odd-numbered dates. A one month exception from the odd/even sprinkling restriction may be granted for newly planted sod, grass or landscaping upon registering for exemption and recommendation of the city. Other exemptions may be granted upon evaluation and recommendation of the city.

(Code 1987, § 610.50; Ord. No. 10-2002, 6-23-2002)

Sec. 74-49. Declared water shortage or water pressure emergency.

(a) *Prohibition.* No person shall draw or use water from the city water mains or city water works system for the purpose of sprinkling or watering lawns or gardens, or use any connection with the said system to sprinkle or water lawns or gardens in the city during the period of emergency caused by shortage or water supply or lowering of water pressure in the city water mains, and when such emergency is found, determined, or declared by the city as provided in subsection (b) of this section. Except as is herein provided, such sprinkling or watering shall not be prohibited.

(b) *Declaration of emergency.* The city may, with recommendation of the public works superintendent, declare the existence of such emergency as and when it may become necessary to enforce the restrictions provided by subsection (a) of this section. The city shall determine and declare the necessary period and conditions of such emergency prohibition and the termination thereof. The city shall further determine and order in said resolution proper notification of consumers during such period of prohibition.

(Code 1987, § 610.55; Ord. No. 04-2001, 7-15-2001)

Sec. 74-50. Special offenses; penalty.

Any person who shall maliciously or willfully divert the water or shall corrupt or render the same impure shall be guilty of a misdemeanor.

(Code 1987, § 610.75)

Sec. 74-51. Recovery of damages.

If any person, through unlawful manipulation or tampering with the water system, shall destroy or injure any property, public or private, the damages so caused may be recovered in a civil action brought by the city, including the cost of the suit.

(Code 1987, § 610.80)

Secs. 74-52—74-75. Reserved.

DIVISION 2. CONNECTIONS

Sec. 74-76. Mandatory connection to system.

The owner of any house, building, or property used for human occupation, employment, recreation, or other purpose, situated within the city and abutting any street, alley, or right-of-way in which there is now located a public water main, is hereby required at their expense to connect such property directly with the proper water main in accordance with provisions of this article within 20 days after date of official notice to do so. The city shall be charged with the responsibility of enforcing the connection of all the aforesaid houses, buildings, or properties to

the public water system. If any of the aforesaid houses, buildings, or properties are determined to not be connected to the public water system within 90 days of the date on which the public water system available to service such house, building, or property, the city shall serve notice of the intent of the city to make such connection by mailing a written notice to the last known address of the record owner of said property by certified mail, postage prepaid, which notice shall advise said record owner of the provisions of this article, and that the city will install the same, assess the cost thereof against the property after 20 days from the date of mailing of said notice unless prior to said time the owner takes out a permit for such connection, and such connection is actually commenced. In the event such owner fails to comply with said notice, the city shall secure such connection to the public water system and shall have the cost thereof assessed as a special assessment against said property in accordance with the provisions of Minn. Stats. § 412.221, subds. 31 and 32, and Minn. Stats. ch. 429.

(Code 1987, § 610.85)

Sec. 74-77. Installation.

(a) *Location of curb boxes.* Curb boxes shall be located at the city right-of-way line. If a sidewalk is present that extends across the right-of-way line and a boulevard exists between the sidewalk and curb, then the curb box may be located within this boulevard as far behind the curb as possible. At all times, the top of the curb box shall be level with the ground surface.

(b) *Separate service connection; multiple dwellings.* Every separate building and each unit in a duplex, twin home, double bungalow, or townhouse supplied with water must have its own service connection directly with the mains and each unit must be provided with a shut-off and drip valve in the cellar from an independent riser pipe. Each water service shall be at least one inch in diameter or larger for single-family homes and for each unit in a duplex, twin home, double bungalow, or townhouse. Each water service serving commercial buildings shall be at least one inch in diameter for buildings containing up to 1,500 square feet of floor area; any building which has more that 1,500 square feet of floor area shall have a minimum service of at least 1½ inches in diameter. These provisions shall apply to all new construction and for any units which connect to the city's water mains hereafter; existing units which do not have separate services as of the effective date of the ordinance from which this section is derived and which are now connected to the city's mains are excepted from these provisions except as set forth below. Two or more adjacent buildings owned by the same person shall be supplied through the same connection only so long as the single ownership continues and provided that the owner agrees to pay all charges for water consumed on the entire premises. Upon the termination of such single ownership, a separate connection shall be made immediately to the building or premises theretofore having the indirect connection, provided that in case there is not water main on any street on which said premises abut, the city may permit such connection to remain until the water main is laid in such abutting street.

(c) *Remote readers required.* Every service shall be metered and shall have remote readers included as a part of the installation. Only meters and readers furnished by the city shall be installed, and they shall remain the property of the city.

(Code 1987, § 610.35; Ord. No. 01-2001, 2-25-2001; Ord. No. 02-2002, 1-20-2002)

Secs. 74-78—74-97. Reserved.

DIVISION 3. SERVICE APPLICATIONS

Sec. 74-98. Required.

Property owners desiring service connections made to their premises must file an application with the city on forms provided for this purpose. Each application must be accompanied by the

payment of the charge specified in section 74-127. Upon payment of such charge and allowance of the application, the city shall allow the connection from the main or curb box to be installed by a duly registered plumber.

(Code 1987, § 610.10)

Sec. 74-99. Contents.

Applications must state the purpose for which the water is to be used, together with a proper description and location of the property and must be signed by the owner or their authorized agent. The application must state distinctly the point on the property line where the service is to enter the premises.

(Code 1987, § 610.20)

Secs. 74-100—74-126. Reserved.

DIVISION 4. RATES AND CHARGES

Sec. 74-127. Water service.

(a) *Gallonage.* Rates and charges for water service shall be as established by the city.

(b) *Water trunk area charge (WTAC).* The city operates a water service system that serves the needs of the community. A water trunk area charge (WTAC) is needed to establish, construct, repair, replace, maintain, enlarge and improve said system. The WTAC is payable by every lot, parcel or piece of property that will connect to the water service system, or an expansion of an existing use caused added consumption of water, whether residential, commercial, or industrial. The amount of this area charge shall be established by the city and shall be calculated according to the current guidelines of the Metropolitan Council Environmental Services.

(c) *Service connection fee.* No permit shall be issued to tap or connect with any water main of the city either directly or indirectly from any lot, tract, or parcel of land unless a water service connection fee has been paid. The amount of this connection fee shall be as established by the city.

(Code 1987, § 610.45; Ord. No. 01-2001, 2-25-2001; Ord. No. 02-2002, 1-20-2002)

Sec. 74-128. Meters.

(a) *One meter per service account.* Except as otherwise provided, the supply of water through each separate service must be recorded by one meter only for which only one account will be rendered by the city. If additional meters are desired for recording the subdivision of the water supply on the premises, they must be furnished and set by the owner or consumer at their expense. A meter must be installed on all service lines.

(b) *Meters; access and repairs.* Meters must at all times be easily accessible so that they may be examined and read by city employees. Damage due to the carelessness or neglect of the owner or occupants of the premises must be paid for by such owner or occupants. The cost of ordinary maintenance and repairs will be borne by the city. Meters owned by consumers will be under the control of the city. In case of breakage, stoppage, or other irregularity in the meter, the owner or consumer is to notify the city immediately. City employees shall, at all reasonable times, have access to premises for readings of meter or inspecting of plumbing. Any person that refuses to allow current or updated meter reading to be installed by appointment inspected within a five-day notice by the city shall be immediately subject to the surcharge herein provided in subsection (h) of this section. This surcharge may be appealed to the City Council within 30 days of the final notice of the surcharge. In the event that the City Council denies the appeal, the

surcharge becomes retroactive to the original date. If no appeal is received in writing by the city within 30 days of the final notice, the surcharge will be considered uncontested and will be applied.

(c) *Testing for faulty meters.* At the written request of any owner or consumer, the city will test the meter supplying their premises. A deposit in an amount as established by the city, will be required, and this will be returned if the meter is not found to be registering correctly within two percent on a flow equal to one-sixth of the diameter of the service or in favor of the consumer. Otherwise, the deposit will be retained by the city to cover the cost of the test.

(d) *Faulty meters; refunds of previous consumption charges.* If the testing of a meter as herein provided shows that it fails to register correctly, the charge for water consumed shall be based on the corresponding period of the previous year, or may be otherwise equitably adjusted by the city. Any other adjustment of charges for water supplied shall be made only by resolution of the City Council.

(e) *Arrears; service disconnections.* If the supply to any premises has been shut off except for repairs, the service will not be reestablished unless a written order is given to the city by the owner or authorized agent, nor until all arrears are paid.

(f) *Remote readers; modification of existing meters.* No charge will be made for the installation of a water meter with the capability of having a remote reader assembly attached. All water users who do not have a remote reader assembly shall be charged the cost of modification, not to exceed a per meter charge as established by the city. The water user may pay the entire cost or if not paid in a lump sum, the charges shall be spread over four quarterly billings and added to their water bill.

(g) *Meters for new home construction.* Two water meters are required for all homes constructed on or after January 1, 2005. The main meter records water usage inside the home, which results in sewer charges from that usage. The secondary, or deduct meter is designed for connection to an existing or proposed outdoor sprinkling system and all outside water faucet connections. The deduct meter records outdoor water usage only and there is no sewer charge from that usage. Both meters and meter readers shall be furnished by the city at the expense of the consumer, shall be installed inside the residence, and shall remain the property of the city. The provisions of subsections (b), (c) and (f) of this section will also apply to the installation and maintenance of the deduct meter.

(h) *Surcharge.* A surcharge of $100.00 per month is hereby imposed on every water bill on or after property owners who are not in compliance with this section or have refused to allow their property to be inspected to determine if there is compliance. All properties found to be in noncompliance with or in violation of this section will be subject to the $100.00 per month penalty for all months between the two most recent inspections.

(Code 1987, § 610.40; Ord. No. 01-2001, 2-25-2001; Ord. No. 01-2005, 1-30-2005; Ord. No. 04-2007, 2-27-2007; Ord. No. 12-2007, 10-23-2007)

Sec. 74-129. Delinquent accounts, penalty, assessment.

In order to defray the city's increased administrative costs caused by water account delinquencies, a ten percent penalty will be added to water bills not paid within 30 days after the date of billing. On or before November 1 of each year, the water superintendent shall have listed and transmitted to the Council the total unpaid charges for water service against each separate lot or parcel to which such is attributable. The Council may then spread the unpaid charges against the property serviced to the county auditor for collection as other taxes are collected under Minn. Stats. § 444.075. In addition to the assessment, a certification fee in an amount as established by the city, may be certified to the county auditor for collection as other taxes are collected.

(Code 1987, § 610.70; Ord. No. 01-2001, 2-25-2001)

Secs. 74-130—74-156. Reserved.

ARTICLE IV. SEWERS AND SEWAGE DISPOSAL

DIVISION 1. GENERALLY

Sec. 74-157. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building sewer means the extension from the building plumbing to the public sewer or other place of disposal.

Garbage means solid wastes from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Industrial wastes means the liquid wastes from industrial processes as distinct from sanitary sewage.

Public sewer or *municipal sewer* means a sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments.

Sewer means a pipe or conduit for carrying sewage.

(Code 1987, § 600.05)

Sec. 74-158. Applicability of article.

The entire municipal sanitary sewer system shall be operated as a public utility and convenience from which revenues will be derived, subject to the provisions of this article. The city, through its designated representative, shall supervise all sewer connections made to the municipal sanitary sewer system and all excavations for the purpose of installing or repairing the same.

(Code 1987, § 600.01)

Sec. 74-159. Variances.

The City Council may permit variations from the strict appliance of any of the provisions of this article if it is satisfied that there are special circumstances or conditions affecting the premises for which the variance is requested and that the granting of such variation will not materially affect adversely the health, safety, or general welfare of public or private property. Any variation permitted under this provision must be noted on the permit.

(Code 1987, § 600.70)

Sec. 74-160. Entry upon private property.

The city inspector, so designated, and any other duly authorized employee of the city bearing proper credentials and identification, shall at reasonable times be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing in connection with the operation of the municipal sanitary sewer system.

(Code 1987, § 600.40)

Sec. 74-161. Service to properties outside of city.

No buildings located on property lying outside the limits of the city shall be connected to the municipal sanitary sewer system unless there is a proper contract between the city and the municipality in which the building is located.

(Code 1987, § 600.35)

Secs. 74-162—74-190. Reserved.

DIVISION 2. CONNECTIONS

Sec. 74-191. Sewage disposal and connections with sewer.

(a) *General rule.* It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the city or in any area under the joint jurisdiction of the city, any human or animal excrement, garbage, or other objectionable waste.

(b) *Discharge into natural outlets prohibited.* It shall be unlawful for any person to discharge into any natural outlet within the city or in any area under the jurisdiction of the city, any sanitary sewage, industrial wastes, or other polluted waters.

(c) *Mandatory connection to public sewer system.* The owner of any house, building, or property used for human occupation, employment, recreation, or other purposes, situated within the city and abutting any street, alley, or right-of-way in which there is now located a public sanitary sewer of the city, is hereby required at their expense to install suitable toilet facilities therein, and to connect such facilities directly to the proper public sewer in accordance with provisions of this subdivision within 20 days after date of official notice to do so. The City Manager shall be charged with the responsibility of enforcing the connection of all the aforesaid houses, buildings, or properties to the public sewer system. If any of the aforesaid houses, buildings, or properties are determined to be not connected to the public sewer system within 90 days of the date on which the public sewer system is available to service such houses, buildings, or properties, the City Manager shall serve notice of the intent of the city to make such connection by mailing a written notice to the last known address of the record owner of said property by certified mail, postage prepaid, which notice shall advise said record owner of the provisions of this article, and that the city will install the same, assess the cost thereof against the property after 20 days from the date of mailing of said notice unless prior to said time the owner takes out a permit for such connection and such connection is actually commenced. In the event such owner fails to comply with said notice, the City Manager shall secure such connection to the public sewer system and shall have the cost thereof assessed as a special assessment against said property in accordance with the provisions of Minn. Stats. § 412.221, subds. 31 and 32, and Minn. Stats. ch. 429.

(Code 1987, § 600.10)

Sec. 74-192. Certificate; payment of fee in lieu of assessment.

(a) No permit shall be issued to tap or connect with any municipal sewer system of the city either directly or indirectly from any lot, tract, or parcel of land unless the City Clerk shall have certified:

(1) That such lot or tract of land to be served by such connection or tap has been assessed for the cost of construction of the sewer main with which the connection is to be made;

(2) If no assessment has been levied for such construction cost, that proceedings for levying such assessment have been or will be

commenced in due course;

(3) That the cost of construction for said sewer main has been paid by the developer, owner, or builder platting said lot or tract of land; this shall not include lots, parcels, or tracts served by the municipal sewer system and which were not a part of the plat or tract developed; or

(4) If no assessment has been levied and no assessment proceedings will be completed in due course, and the developer, owner, or builder of the lot, tract, or parcel has not paid the cost of improving said lot, tract, or parcel of land, that a sum equal to the portion of the cost of constructing said sewer which would be assessable against said lot or tract has been paid to the city.

(b) If no such certificate can be issued by the clerk, no such permit to tap or connect to said sewer main shall be issued unless the applicant shall pay an additional connection fee which shall be equal to the portion of cost of construction of said main which would be assessable against said lot, tract, or parcel, to be served by such tapping or connection. Said assessable cost is to be determined by the City Manager and the city assessor who may obtain the assistance of an engineer, and said costs shall be on the same basis per front foot as any assessment previously levied against other property for the said main or, if no such assessment has been levied, upon the basis of the uniform charge per front foot which may have been or which shall be charged for similar tapping or connection with said main, determined on the basis of the total assessable costs of said main allocated on a frontage basis; where the assessable cost cannot be so determined, the charge is as established by the city, per front foot of the property in accordance with the minimum frontage requirements of chapter 129. Any sum received by the city under this section shall be paid into a special escrow account until it shall be determined by the City Council whether the property served by said connection under said permit will be assessable for any other sewer main; if it shall be determined that no other main shall be so assessable, then said fee shall be credited to the fund for the sewer main for which the connection was made, but if the lot, tract, or parcel served by the connection is subsequently assessed for another sewer main, such sum shall be transferred to the sum for said main, and credited against the amount assessable against said tract or lot. The City Council may, by its resolution and upon receipt of a consent to assessment form signed by all owners, provide that any charge for sewer connection, as provided by this section, be transmitted to the county auditor to be extended on the proper tax lists of the county to be payable in not more than 20 annual installments, and to provide further that all assessments and interest collected by the county treasurer therefrom shall be paid over to the Finance Director in the same manner as other municipal taxes.

(Code 1987, § 600.50; Ord. No. 01-2001, 2-25-2001)

Sec. 74-193. Permits; licenses; fees; bond and insurance.

(a) *Application required; permit fees; double fee penalty*. Any person desiring to make connection to the municipal sanitary sewer system shall comply with this Code. The application shall be submitted on forms furnished by the city, and shall be accompanied by plans, specifications, and such other information as is desired by the city inspector, together with a permit and inspection fee as established by the city. All costs and expenses incidental to the installation and connection shall be borne by the owner and the owner shall indemnify the city for any loss or damage that may directly or indirectly be occasioned by the installation of the sewer connection including restoring streets and street surfaces. Any person who shall commence work of any kind for which a permit is required under this article or under chapter 105, article II of this Code, pertaining to the state building code, without first having received the necessary permit therefor, shall, when subsequently securing such permit, be required to pay double the fees

provided by this article for such permit and shall be subject to all the penal provisions of this article. Any application for a connection permit shall state the legal description of the premises as originally assessed, the zoning use classification of the property at the time of the application, and the zoning use classification of the subject premises at the time when assessed.

(b) *Registered plumber required; duties of city inspector.* Permits shall only be issued when the applications show that the work is to be done by persons who have been duly registered pursuant to chapter 105, article II of this Code, pertaining to the state building code. No permit shall be issued until the plumbing in the building to be served is inspected by the city inspector and altered, if necessary, to conform to the state building code to the extent necessary to permit a proper and safe connection to the municipal sanitary sewer system. Upon completion of the work, a copy of the permit shall be signed and dated by the person making the sewer installation and delivered to the city inspector at the time he makes his final inspection of the work. The city inspector shall sign the permit to show that the work and material conform to this Code. The permit shall also be filled out showing the kind and size of pipe, the kind of joint used, the length of the building sewer connection, the depth at the street, the depth at the house, the distance from either side of the house where the connection is made to the house plumbing, and any other information listed on the permit form or required by the city inspector.

(Code 1987, § 600.55; Ord. No. 01-2001, 2-25-2001; Ord No. 01-2002, 1-20-2002)

Sec. 74-194. Excavation permit required.

Installation and excavation shall be done in accordance with the provisions of chapter 62, article III. All excavations shall be open-trench work unless otherwise authorized by the city inspector. The foundation in the trench shall be formed to prevent any subsequent settlement of the pipes. If the foundation the pipe is to be laid on is good and firm, the earth shall be pared or molded to give a full support to the lower third of each pipe. Bell holes shall be dug to provide ample space for pouring of joints. Care must be exercised in backfilling below the centerline of the pipe in order to give it proper support. Backfilling shall not be done until the section to be backfilled has been inspected and approved by the city inspector.

(Code 1987, § 600.60)

Sec. 74-195. Independent system for each building.

(a) *No shared service connections.* The drainage and plumbing system of each new building and of new work installed to an existing building shall be separate from and independent of any other building except as provided in subsection (b) of this section and every building shall have an independent connection with a public sewer when such is available.

(b) *Land locked lots.* Where one building stands to the rear of another building on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building only with the approval of the City Council. Where such a building sewer is extended, a cleanout shall be provided immediately inside the rear wall of the front building, and at the property line.

(Code 1987, § 600.65)

Secs. 74-196—74-213. Reserved.

DIVISION 3. DISCHARGE RESTRICTIONS AND LIMITATIONS

Sec. 74-214. Types of wastes prohibited.

(a) *Unlawful discharge.* Except upon issuance of a written permit by the Council, it shall be unlawful to discharge any of the following described waters or wastes into the municipal

sanitary sewer system:

(1) Any liquid or vapor having a temperature higher than 180 degrees Fahrenheit.

(2) Any waters or wastes containing more than 100 parts per million by weight, of fat, oil, or grease.

(3) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(4) Any garbage that has not been shredded so that the garbage particles are smaller than one-half inch in their largest dimension.

(5) Any ashes, cinders, sand, and straw shavings, metal, glass, rages, feathers, plastic wood, paunch manure, or any other solid or viscous substances capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage system.

(6) Any waters or wastes containing an acid or a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment processes or which constitutes a hazard to humans or animals or creates any hazard in the receiving waters of the sewage treatment plant.

(7) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

(8) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(9) Radioactive wastes of any kind.

(10) Any waters or wastes having a five-day biochemical oxygen demand greater than 500 parts per million by weight.

(11) Any waters or wastes containing more than 500 parts per million by weight of suspended solids.

(12) Any waters or wastes having an average daily flow greater than two percent of the average daily sewage flow of the municipal sewer system.

(b) *Pretreatment required.* The Council may, as a condition to any permit issued pursuant to subsection (a) of this section, require the applicant to provide, at his expense, such preliminary treatment as may be necessary to:

(1) Reduce biochemical oxygen demand to 500 parts per million and suspended solids to 500 parts per million by weight;

(2) Reduce objectionable characteristics or constituents to within the maximum limits provided for in subsections (a)(1) through (8) of this section; and

(3) Control the quantities and rates of discharge of such waters or wastes.

Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval of the City Council and of the Minnesota Pollution Control Agency (MPCA), and no construction of such facilities shall be commenced until said approvals are obtained in writing. Any preliminary treatment facilities shall be maintained continuously in satisfactory and effective operation, by the owner at his expense. His

failure to do so shall be construed as a public nuisance and the city reserves the right to discontinue service. The owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer line to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the City Council. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this section shall be determined in accordance with methods employed by the state department of health or the state pollution control agency and shall be determined at the control manhole provided for herein, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

(c) *Special user contracts.* Nothing contained in this section shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern. Any such agreement must be in accord with the terms of the contract between the city and the City of Spring Park.

(Code 1987, § 600.15)

Sec. 74-215. Discharge of industrial wastes.

It shall be unlawful to discharge into the municipal sanitary sewer system any industrial wastes unless prior approval of the Metropolitan Council Environmental Services (MCES) is obtained. The MCES shall approve the discharge of industrial wastes when, in their opinion, the proposed wastes will not be of an unusual amount or character, and are not in excess of the limitation of this article. The MCES shall continue to review the amount and character of the industrial waste, and shall revoke their approval of such discharge into the municipal sanitary sewer system when in his opinion the wastes are unusual in amount or character and in excess of the limitations of this article. Notice of revocation of approval shall be mailed by certified mail to the last known address of the owner. The owner shall have ten days from the date of mailing of said notice within which to file an appeal therefrom by filing a notice of intent to appeal with the City Manager, whereupon the City Council shall within 30 days review the decision of the MCES to revoke approval.

(Code 1987, § 600.20)

Sec. 74-216. Prohibiting discharges into the sanitary sewer system.

(a) *Purpose.* The discharge of water from roof, surface, groundwater sump pump, footing tile, swimming pool, air conditioning, or other natural precipitation into the city sewerage system results in flooding and overloading of the sewerage system. When this water is discharged into the sanitary sewer system, it is treated at the sewage treatment plant. This results in very large and needless expenditures. The City Council, therefore, finds it in the best interest of the city to prohibit such discharges.

(b) *Discharge prohibited.* No water from any roof, surface, groundwater sump pump, footing tile, swimming pool, or other natural precipitation shall be discharged into the sanitary sewer system. Dwellings and other buildings and structures which require, because of infiltration of water into basements, crawl spaces, and the like, a sump pump discharge system shall have a permanently installed discharge line which shall not at any time discharge water into the sanitary sewer system, except as provided herein. A permanent installation shall be one which provides for year round discharge capability to either the outside of the dwelling, building, or structure, or

is connected to city storm sewer or discharge through the curb and gutter to the street. It shall consist of a rigid discharge line, without valving or quick connections for altering the path of discharge, and if connected to the city storm sewer line, include a check valve and an air gap located in a small diameter structure as shown in the city's standard plates.

(c) *Disconnection.* Before April 1, 1997, any person having a roof surface, groundwater sump pump, footing tile, or swimming pool now connected and/or discharging into the sanitary sewer system shall disconnect or remove same. Any disconnects or openings in the sanitary sewer system shall be closed or repaired in a manner, as approved by city public works or its designated agent.

(d) *Inspection.* Every person owning improved real estate that discharges into the city's sanitary sewer system shall allow an employee of the city or a designated representative of the city to inspect the buildings to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. In lieu of having the city inspect their property, any person may furnish a certificate from a licensed plumber certifying that their property is in compliance with this section. Any person refusing to allow their property to be inspected or refusing to furnish a plumber's certificate within 14 days of the date city employees or their designated representatives are denied admittance to the property, shall immediately become subject to the surcharge hereinafter provided for. Any property found to violate this section shall make the necessary changes to comply with this section and furnish proof of the changes to the city.

(e) *Future inspections.* Each sump pump connection identified will be reinspected periodically.

(f) *New construction.* All new dwellings that require sumps shall have sumps piped to the outside of the dwelling and comply with the provisions of this section before a certificate of occupancy is issued.

(g) *Surcharge.* A surcharge of $100.00 per month is hereby imposed on every sewer bill mailed to property owners who are not in compliance with this section or who have refused to allow their property to be inspected to determine if there is compliance. All properties found during reinspection to have violated this section will be subject to the $100.00 per month penalty for all months between the two most recent inspections.

(Code 1987, § 600.25; Ord. No. 88-1997, 3-15-1997)

Secs. 74-217—74-240. Reserved.

DIVISION 4. RATES AND CHARGES

Sec. 74-241. Established.

(a) *Council action.* Rates and charges for the collection and treatment of sewage shall be established by the city. All availability charges, area charges and connection fees shall be paid at the time a building permit is obtained, unless a subdivision agreement, development agreement, or resolution provides otherwise.

(b) *Service availability charge.* In addition to, and not in lieu of, all other charges imposed from time to time by the city for building permits, sewer connection permits, sewage usage rates, and sewer area charges, the then prevailing Metropolitan Council Environmental Services agency service availability charge (SAC) shall be paid to the city at the time a building permit for new construction is issued, or at the time a sewer connection permit is issued for the connection of an existing building to the city sanitary sewer system. The amount of the service availability charge shall be established by the Metropolitan Council Environmental Services agency.

(c) *Sewer trunk area charge (STAC).* The city operates a sewage collection system to serve the needs of the community. A sewer trunk area charge (STAC) is needed to establish, construct, repair, replace, maintain, enlarge and improve said system. The STAC is payable by every lot, parcel or piece of property that will connect to the sewage collection system, or cause additional use or excessive discharge of sewage, whether residential, commercial or industrial, or the construction of additional units upon land already connected to the system. The amount of this area charge shall be as established by ordinance and shall be calculated according to the current guidelines of the Metropolitan Council Environmental Services agency.

(d) *Service connection fee.* No permit shall be issued to tap or connect with any municipal sewer system of the city either directly or indirectly from any lot, tract, or parcel of land unless a sewer service connection fee has been paid. The amount of this connection fee shall be as established by the city.

(e) *Unusual wastes; special rates.* As to any sewage or industrial waste which is unusual in either character or amount, the City Council reserves the right to impose such supplemental sewage rate charge as said City Council shall determine is reasonable and warranted on the basis of all relevant factors, in addition to all applicable charges hereunder.

(Code 1987, § 600.45; Ord. No. 01-2001, 2-25-2001; Ord. No. 01-2002, 1-20-2002)

Sec. 74-242. Strength charge.

(a) *Recitals.* The Metropolitan Council Environmental Services, a metropolitan WCES organized and existing under the laws of the state (WCES), in order to receive and retain grants in compliance with the Federal Water Pollution Control Act Amendments of 1972 and regulations thereunder (the Act), has determined to impose an industrial user sewer strength charge upon users of the metropolitan disposal system (as defined in Minn. Stats. § 473.121, subd. 24) to recover operation and maintenance costs of treatment works attributable to the strength of the discharge of industrial waste, such sewer strength charge being in addition to the charge based upon the volume of discharge. In order for the city to pay such costs based upon strength of industrial discharge and allocated to it each year by the MCES, it is hereby found, determined and declared to be necessary to establish sewer strength charges and a formula for the computation thereof for all industrial users receiving waste treatment services within or served by the city. Furthermore, Minn. Stats. § 444.075, subd. 3, empowers the city to make such sewer charge a charge against the owner, lessee, occupant, or all of them and certify unpaid charges to the county auditor as a tax lien against the property served.

(b) *Establishment.* For the purpose of paying the costs allocated to the city each year by the commission that are based upon the strength of discharge of all industrial users receiving waste treatment services within or served by the city, there is hereby approved, adopted, and established, in addition to the sewer charge based upon the volume of discharge, a sewer charge upon each company or corporation receiving waste treatment services within or served by the city, based upon strength of industrial waste discharged into the sewer system of the city (the strength charge).

(c) *Establishment of formula.* For the purpose of computation of the strength charge established in subsection (b) of this section, there is hereby established, approved, and adopted in compliance with the Act the same strength charge formula designated by resolution of the Metropolitan Council Environmental Services, such formula being based upon pollution qualities and difficulty of disposal of the sewage produced through an evaluation of pollution qualities and quantities in excess of an annual average base and the proportionate costs of operation and maintenance of waste treatment services provided by the commission.

(d) *Payment.* It is hereby approved, adopted and established that the strength charge established in subsection (b) of this section shall be paid by each industrial user receiving waste

treatment services and subject thereto before the 20th day next succeeding the date of billing thereof to such user by or on behalf of the city, and such payment thereof shall be deemed to be delinquent if not so paid to the building entity before such date. Furthermore, it is hereby established, approved, and adopted that if such payment is not paid before such date, an industrial user shall pay interest compounded monthly at the rate of two-thirds of one percent per month on the unpaid balance due.

(e) *Establishment of tax lien.* As provided in Minn. Stats. § 444.075, subd. 3e, it is hereby approved, adopted and established that if payment of the strength charge established in subsection (b) of this section is not paid before the 60th day next succeeding the date of billing thereof to the industrial user by or on behalf of the city, said delinquent sewer strength charge, plus accrued interest established pursuant to subsection (d) of this section, shall be deemed to be a charge against the owner, lessee, and occupant of the property served, and the city or its agent shall certify such unpaid delinquent balance to the county auditor with taxes against the property served for collection as other taxes are collected; provided, however, that such certification shall not preclude the city or its agent from recovery of such delinquent sewer strength charge and interest thereon under any other available remedy.

(Code 1987, § 600.80)

Sec. 74-243. Delinquent accounts, penalty, assessment.

In order to defray the city's increased administrative costs caused by water account delinquencies, a ten percent penalty will be added to sewer bills not paid within 30 days after the date of billing. On or before November 1 of each year, the water superintendent shall have listed and transmitted to the Council the total unpaid charges for water service against each separate lot or parcel to which such is attributable. The Council may then spread the unpaid charges against the property serviced to the county auditor for collection as other taxes are collected under Minn. Stats. § 444.075. In addition to the assessment, a certification fee as established by the city may be certified to the county auditor for collection as other taxes are collected.

(Code 1987, § 600.85; Ord. No. 59-1992, 9-14-1992; Ord. 01-2001, 2-25-2001)

Secs. 74-244—74-264. Reserved.

ARTICLE V. STORM DRAINAGE SYSTEMS

DIVISION 1. GENERALLY

Sec. 74-265. Drainage and erosion control.

(a) *Drainage plan.* In the development, improvement or alteration of land, the direction, quantity or quality of drainage shall not be changed unless plans for the development are submitted to the city engineer. Runoff shall be properly channeled into a storm drain, watercourse, ponding area or other public facility.

(b) *Erosion and sediment control plan.* Prior to the issuance of a building or grading permit for any development, improvement or alteration of land, a plan for erosion and sedimentation control shall be presented with the site plan. The erosion and sedimentation control plan shall specify the measures to be used before, during and after construction until the soil and slope are stabilized by permanent cover. These control measures shall be maintained in good working order until site stabilization occurs.

(c) *Plan approval.* In areas which are susceptible to erosion hazard or sedimentation damage, the city may require the erosion and sedimentation control plan to be approved by the appropriate water management organization prior to the issuance of a permit.

(d) *Approval.* Plans and provisions required for compliance with this article must be

submitted to the city engineer for approval.

(Code 1987, § 650.45; Ord. No. 98-1998, 6-20-1998; Ord. No. 03-2016, 3-20-2016)

Secs. 74-266—74-293. Reserved.

DIVISION 2. STORMWATER UTILITY

Sec. 74-294. Storm sewer system; statutory authority.

Minn. Stats. § 444.075, authorizes cities to impose just and reasonable charges for the use and availability of storm sewer facilities (charges). By this article, the city elects to exercise such authority.

(Code 1987, § 650.01; Ord. No. 03-2016, 3-20-2016)

Sec. 74-295. Findings and determinations.

In providing for such charges, the findings and determinations set out in this article are made as follows:

(1) In the exercise of its governmental authority and in order to promote the public health, safety, convenience and general welfare, the city has constructed, operated and maintained a storm sewer system (the system). This article is adopted in the further exercise of such authority and for the same purposes.

(2) The system, as constructed, heretofore has been financed and paid for through the imposition of special assessments and ad valorem taxes. Such financing methods were appropriate to the circumstances at the time they were used. It is now necessary and desirable to provide an alternative method of recovering some or all of the future costs of improving, maintaining and operating the system through the imposition of charges as provided in this article.

(3) In imposing charges, it is necessary to establish a methodology that undertakes to make them just and equitable. Taking into account the status of completion of the system, past methods of recovering system costs, the topography of the city and other relevant factors, it is determined that it would be just and equitable to assign responsibility for some or all of the future costs of operating, maintaining and improving the system on the basis of the expected stormwater runoff from the various parcels of land within the city during a standard one-year rainfall event.

(4) Assigning costs and making charges based upon expected typical stormwater runoff cannot be done with mathematical precision but can only be accomplished within reasonable and practical limits. The provisions of this article undertake to establish a reasonable and practical methodology for making such charges.

(Code 1987, § 650.05; Ord. No. 03-2016, 3-20-2016)

Sec. 74-296. Rates and charges.

(a) *Residential equivalent factor.* Rates and charges for the use and availability of the system shall be determined through the use of a residential equivalent factor (REF). For the purposes of this article, one REF is defined as the ratio of the average volume of surface water runoff coming from one acre of land and subjected to a particular use, to the average volume of

runoff coming from one acre of land subjected to typical single-family residential use within the city during a standard one-year rainfall event.

(b) *Determination of REFs for land uses.* The REFs for the following land uses within the city and the billing classifications for such land uses are as follows:

Land Uses	*REF*	*Classification*
Cemeteries	0.25	1
Parks and railroads	0.75	2
Two-family residential	1.00	3
Single-family residential	1.00	4
Public and private schools and institutional use	1.25	5
Multiple-family residential uses and churches	3.00	6
Commercial, industrial and warehouse uses	5.00	7

(c) *Other land uses.* Other land uses not listed in the table in subsection (b) of this section shall be classified by the City Manager by assigning them to the classes nearly like the listed uses, from the standpoint of probable hydrologic response. Appeals from the City Manager's determination of the proper classifications may be made to the City Council in the same manner as other appeals from administrative determinations under section 129-32.

(Code 1987, § 650.10)

Sec. 74-297. Establishing basic rate.

In determining charges, the Council shall, from time to time, by resolution, establish a basic system rate to be charged against one acre of land having an residential equivalent factor REF of one. The charge to be made against each parcel of land shall then be determined by multiplying the REF for the parcel's land use classification times the parcel's acreage times the basic system rate.

(Code 1987, § 650.15)

Sec. 74-298. Standardized acreage.

For the purpose of simplifying and equalizing charges against property used for single-family and two-family residential purposes, each of such properties shall be considered to have an acreage of one-fifth acre.

(Code 1987, § 650.20)

Sec. 74-299. Adjustments of charges.

The City Council may by resolution, from time to time, adopt policies providing for the adjustment of charges for parcels or groups of parcels, based upon hydrologic data supplied by affected property owners, demonstrating an actual hydrologic response substantially different from the residential equivalent factor REF being used for the parcel or parcels. Such adjustment shall be made only after receiving the recommendation of the City Manager and shall not be made effective retroactively. If the adjustment would have the effect of changing the REF for all or substantially all of the land uses in a particular classification, however, such adjustment shall be accomplished by amending the REF table in section 74-296(b).

(Code 1987, § 650.25)

Sec. 74-300. Excluded lands.

No charge for system availability or service shall be made against land which is either:

(1) Public street right-of-way; or

(2) Vacant and unimproved with substantially all of its surface having vegetation as ground cover.

(Code 1987, § 650.30)

Sec. 74-301. Supplying information.

The owner, occupant or person in charge of any premises shall supply the city with such information as the city may reasonably request related to the use, development and area of the premises. Willful failure to provide such information or to falsify it is a violation of this article.

(Code 1987, § 650.35)

Sec. 74-302. Estimated charges.

If the owner, occupant or person in charge of any premises fails or refuses to provide the information requested, as provided in section 74-301, the charge for such premises shall be estimated and billed in accordance with such estimate, based upon information then available to the city.

(Code 1987, § 650.40)

DIVISION 3. STORMWATER ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sec 74-303. Purpose and Objectives.

The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the City of Mound through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by state and federal law. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) MS4 permit process. The objectives of this Article are:

(a) To regulate the contribution of pollutants to the municipal separate storm sewer system by stormwater discharges by any user;

(b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

(c) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Article.

Sec 74-304. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Authorized Enforcement Agency means employees or designees of the City of Mound or the Minnesota Pollution Control Agency as designated to enforce this Article.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly into stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control

site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City means the City of Mound

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more and projects that disturb less than 1 acre if they are part of a larger common plan of development. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 74-309 of this Article.

Illicit Connections means an illicit connection is defined as either of the following: (i) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City or, (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City.

Industrial Activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Minnesota Pollution Control Agency (MPCA).

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying Storm Water.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by EPA (or by the State of Minnesota under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to Waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge means any discharge to the storm drain system that is not composed entirely of storm water.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquids, solid wastes, and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and boulevards.

Storm Drainage System means publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, infiltration, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan (SWPPP) means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the maximum extent practicable.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility or property.

Waters of the State means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state of Minnesota or any portion thereof.

Sec 74-305. Applicability.

This Article shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Sec 74-306. Responsibility for Administration.

The City of Mound shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon by the MPCA may be delegated in writing by the Director of Public Works of the City of Mound to persons or entities acting in the beneficial interest of or in the employ of the City.

Sec 74-307. Severability.

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Article.

Sec 74-308. Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Sec 74-309. Discharge Prohibitions.

(d) *Prohibition of Illegal Discharges and Connections.* No person shall discharge or cause to be discharged into the municipal storm drain system or Waters of the State any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited:

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this Article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(4) Connection of private sump pump and/or drain tile lines to public storm sewers is prohibited unless a Right of Way permit is obtained from the City Engineer.

(e) *Exemptions.* Except as otherwise provided herein, the following discharges are exempt from discharge prohibitions established by this Article: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains that discharge uncontaminated water, crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated - typically less than one PPM chlorine), fire-fighting activities, street cleaning activities and any other water source not containing pollutants.

(1) Discharges specified in writing by the MPCA as being necessary to protect public health and safety.

(2) Dye testing is an allowable discharge, but requires a verbal notification to the Director of Public Works 48-hours prior to the start of the test.

(3) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the MPCA or Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Sec 74-310. Suspension of MS4 Access.

(a) *Suspension due to Illicit Discharges in Emergency Situations*. The City of Mound may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

(b) *Suspension due to the Detection of Illicit Discharge.* Any person discharging to the MS4 in violation of this Article may have their MS4 access terminated if such

termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access.

(c) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

Sec 74-311. Industrial or Construction Activity Discharges.

Any person subject to an Industrial or Construction Activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharges to the MS4.

Sec 74-312. Monitoring of Discharges:

(a) Applicability. This section applies to all facilities that have stormwater discha*rges associated with industrial activity, including construction activity.*

(b) *Access to Facilities.*

(1) The City shall be permitted to enter and inspect facilities subject to regulation under this Article as often as may be necessary to determine compliance with this Article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of the NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The City has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy per manufacturer’s recommendations.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the City access to a permitted facility is a violation of the stormwater discharge permit and of this Article. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.

(7) If the City has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

Sec 74-313. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES: The City of Mound has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or Waters of the State. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or Waters of the State through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Sec 74-314. WATERCOURSE PROTECTION:

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles (including grass clippings, leaves or any other organic material) that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec 74-315. NOTIFICATION OF SPILLS:

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such a release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services by calling 911. In the event of a release of non-hazardous materials, said person shall notify the City in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Mound within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Sec 74-316. ENFORCEMENT:

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Article, the City may order compliance by written Notice of Violation to the responsible person. Such notice may require without limitation:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of illicit connections or discharges;

(c) The violating discharges, practices, or operations shall cease and desist;

(d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and

(e) Payment of a fine to cover administrative and remediation costs;

(f) The implementation of source control or treatment BMPs; and

(g) The deadline within which to remedy the violation.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Sec 74-317. APPEAL OF NOTICE OF VIOLATION:

Any person receiving a Notice of Violation may appeal the determination of the City. The notice of appeal must be received by the City within 15 days from the date of the Notice of Violation. The appeal shall be heard by the City Council within 30 days from the date of receipt of the notice of appeal. The decision of the City Council shall be final.

Sec 74-318. ENFORCEMENT MEASURES AFTER APPEAL:

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within the deadline extended by the decision of the City Council, then representatives of the City shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or its designated contractor to enter upon the premises for the purposes set forth above.

Sec 74-319. COST OF ABATEMENT OF THE VIOLATION:

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs and the deadline to pay the abatement costs. The property owner may file a written protest objecting to the costs and payment terms of the abatement within 15 days. The appeal shall be heard by the City Council within 30 days from the date of receipt of the notice of appeal. If the amount due is not paid within a timely manner as determined by the decision of the City Council after hearing the appeal, the charges will be filed with Hennepin County and shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Sec 74-320. INJUNCTIVE RELIEF:

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec 74-321. COMPENSATORY ACTION:

In lieu of enforcement proceedings, penalties, and remedies authorized by this Article, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Sec 74-322. VIOLATIONS DEEMED A PUBLIC NUISANCE:

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec 74-323 CRIMINAL PROSECUTION:

Any person that violates this Article shall be deemed guilty of a misdemeanor and upon conviction thereof, may be subject to the maximum fine and imprisonment allowed by State law. Each such violation shall constitute a separate offense punishable to the maximum extent of the law. The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this Article, including sampling and monitoring expenses.

(Ord. No. 03-2016, 3-20-2016)

Chapter 78

WATERWAYS*

***State law reference—**Water safety and watercraft, Minn. Stats. ch. 86B.

ARTICLE I. IN GENERAL

Sec. 78-1. Harbor limits.

(a) *Enumerated.* The geographical and jurisdictional limits of the city in, on and over navigable waters in or adjacent to the city shall extend to the harbor limits of any adjoining municipality or other governmental unit.

(b) *Primary harbor limit.* The area within 300 feet of the water line on the shore of any lake or other body of water in or adjacent to the city shall be known as the "primary harbor limit."

(c) *Secondary harbor limit.* The area extending from 300 feet of the water line on the shore of any lake or other body of water in or adjacent to the city and to the harbor limits of any adjoining municipality or other governmental unit shall be known as the "secondary harbor limit."

(d) *Jurisdictional limit.* The harbor limits of this city shall be deemed not to extend beyond a point halfway between the shores of the body of water over which this city has jurisdiction and the shores of the body of water located in another city or governmental unit.

(Code 1987, §§ 160.01—160.15)

Sec. 78-2. Provisions of state law adopted.

The provisions of Minn. Stats. ch. 86B, with reference to the definition of terms, conditions or operation, restrictions, and provisions relating to the use and operation of watercraft and the use of public waters are adopted and made a part of this chapter as if set out in full.

(Code 1987, § 1015.01)

Sec. 78-3. Provisions of LMCD regulations adopted.

The regulations of the Lake Minnetonka Conservation District (LMCD) with reference to the definition of terms, conditions of operation, restrictions, and provisions relating to the use and operation of watercraft and the use of public waters are adopted as if set out in full.

(Code 1987, § 1015.05)

Sec. 78-4. Limitation of fish houses.

No person shall place or allow any fish house, warming house, or other similar structure to remain on any frozen public waters within the harbor limits of this city unless there is legibly painted thereon in letters three inches in height the following information:

(1) Name of owner;

(2) Address of owner; and

(3) Telephone number of owner, or if the owner has no telephone, the words "No Phone";

unless the door of such structure can be opened from the outside at all times when the same is in use.

(Code 1987, § 1015.10)

Sec. 78-5. Seasonal removal of fish houses.

No person shall allow any fish house, warming house, or other similar structure to remain upon any frozen public waters within the harbor limits of the city, or upon private land within the city, without the owner's written consent, after March 1 of any year.

(Code 1987, § 1015.15)

Sec. 78-6. Seasonal watercraft launch areas.

(a) There shall be no launching, mooring, or docking of watercraft from June 1 through September 15 of any year in the beach areas of Pembroke, Wychwood, Chester Park Beach, Three Points Beach, and Centerview Beach. These beach areas shall be posted as follows:

"Swimming Beach Only No Launching of Boats from June 1 through September 15"

(b) The City Council, by resolution, may designate additional public beaches at which the launching, mooring, and docking of watercraft will be prohibited, and may by resolution provide for the posting of appropriate signs.

(Code 1987, § 1015.20)

Sec. 78-7. Public bathing beach.

It shall be unlawful to swim, wade, or bathe from any city public lands, public parks, public commons, or other public property, except where such property has been designated as a public bathing beach by the City Council, by resolution, and is designated as such by appropriate signs, buoys, and markers.

(Code 1987, § 1015.25)

Sec. 78-8. Public bathing beach, hours.

Public bathing beaches within the city shall be closed at 10:00 p.m., and any person found swimming, wading, bathing, or loitering on any such beach between the hours of 10:00 p.m. and 5:00 a.m. shall be guilty of a misdemeanor.

(Code 1987, § 1015.30)

Sec. 78-9. Finding and determination.

Due to inherent risk of injury to persons engaged in boating and pedestrian activities within the relatively confined and congested areas of the Lost Lake greenway and pier, the City Council has determined that it is necessary to, in the interest of public heath, safety and welfare, to prohibit certain activities at certain portions of the Lost Lake greenway and pier. In order to preserve the peace, quiet, good order and in order to reduce the city's liability, certain activities will be prohibited on all docks owned by the City of Mound, including multiple slip dock complexes, and that portion of the Class D and Class E commons shoreline where an Abutting Residence parcel of land is contiguous with the commons shoreline. The Centerview Beach Fishing Pier and dock program licensees who own their own dock complex are exempt from this language.

(Code 1987, § 903.00; Ord. No. 01-2004, 6-6-2004; Ord. No. 09-2004, 10-10-2004; Ord. No. 2-2015; 04-05-2015)

Sec. 78-10. Prohibited activities.

(a) The following are hereby declared to be prohibited activities from any public dock, pier, or other city regulated or owned structure or on any city lands at that portion of the Lost Lake Channel described in city Resolution 03-28, which resolution is on file in the office of the City Clerk, and areas as stated in Sec. 78-09:

1. No fishing .The term fishing shall include fishing with a line, taking fish by means of snagging, spearing, harpooning, archery or by dip net.

2. No Swimming, diving, possession of open alcohol, or glass containers.

3. No mooring or docking any boat or watercraft at any designated public dock or pier on weekdays from 12:00 a.m. until 5:00 a.m., and on weekends and holidays from 1:00 a.m. to 5:00 a.m., excluding multiple slip dock complexes which shall follow the procedures contained in City Code Chapter 78, Article VI. Slip Licensing.

4. Mooring or docking any boat or watercraft at any designated public dock or pier for longer than eight (8) hours per twenty-four (24) hour period, excluding multiple slip dock complexes which shall follow the procedures contained in City Code Chapter 78, Article VI. Slip Licensing.

(b) Abatement. Violations related to public docks and commons usage as described in this subsection shall follow the procedures contained in City Code Section 78-103 Regulations and Section 78-104 Enforcement.

(Code 1987, § 903.05; Ord. No. 01-2004, 6-6-2004; Ord. No. 09-2004, 10-10-2004; Ord. No. 2-2015, 04-05-2015)

Sec. 78-11. Signs to be posted.

Signs shall be posted at suitable locations within the regulated area of city lands at that portion of the Lost Lake Channel as described in city Resolution 03-28 and at or near the entry of multiple slip dock complexes that contain 10 or more multiple slip sites, informing the public that fishing is prohibited, along with other prohibited activities, within the area where signage is posted.

(Code 1987, § 903.10; Ord. No. 01-2004, 6-6-2004; Ord. No. 09-2004, 10-10-2004; Ord. No. 2-2015, 04-05-2015)

Secs. 78-12—78-30. Reserved.

ARTICLE II. COMMERCIAL BOATS

Sec. 78-31. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hire means the asking or receiving of compensation in the form of money, good, or thing of value.

Motor boat includes any watercraft of any type whatsoever and propelled by motor.

Passenger means any human being.

Transportation means the moving of any human being from one place within the limits of the city or from the shoreline of Lake Minnetonka within the city to another place, either within or without the city limits, or offering to do so.

(Code 1987, § 435.01)

Sec. 78-32. Transport license required.

No person shall engage in the business of transporting persons for hire by motor boat within the limits of the city or upon the shoreline of Lake Minnetonka within the city or from the shoreline of Lake Minnetonka within the city without first having received a license therefor as hereinafter provided.

(Code 1987, § 435.05)

Sec. 78-33. Tow license required.

No person shall engage in the business of operating or shall operate any motor boat within the limits of the city upon or from the shoreline of Lake Minnetonka within the city which said motor boat shall tow or pull any person upon water skis, surf boards, or other devices, in cases where such motor boat is operated for hire or where compensation in the form of money, goods, or things of value is asked or received from the person so towed or pulled, either for the act of so towing or pulling or for instructions or lessons in the riding, handling, or operating of such motor skis, surf boards, or other devices, without having first received a license therefor as hereinafter provided.

(Code 1987, § 435.10)

Sec. 78-34. Application form.

Application for such license shall be made to the City Clerk in such form as shall be approved by the City Council. Such application shall give such information as to the licensee and the proposed business as the Council may desire.

(Code 1987, § 435.15)

Sec. 78-35. Approval by Council.

Said application shall be presented to the City Council and the license shall be granted if the Council deems such person a responsible party and does not believe that the granting of such license shall be detrimental to the public welfare or constitute a nuisance.

(Code 1987, § 435.20)

Sec. 78-36. License term, nontransferability.

Licenses granted under this article shall be for the term of one boating season, provided that all such licenses shall expire on April 1 of each year. Licenses shall not be transferable with respect to either the name of the licensee or to the boat license. No license fee for a license issued hereunder shall be refunded or prorated for any reason, including discontinuance of use.

(Code 1987, § 435.25)

Sec. 78-37. Conditions of license.

Any license granted hereunder is subject to the condition that all boats shall operate in a quiet and orderly manner in compliance with state law, and subject to the rules as to hours of operation and general regulations established by the Council by ordinance or resolution from time to time.

(Code 1987, § 435.30)

Sec. 78-38. License fee.

Every application for a license under this section shall be accompanied by fees as established by the city. Upon the granting of any license hereunder, said fees shall be transmitted by the clerk to the Finance Director and credited to the general fund. If the license is denied, the fee shall be returned to the applicant.

(Code 1987, § 435.35; Ord. No. 01-2001, 2-25-2001)

Sec. 78-39. Inspection.

The Council may cause the Chief of Police or other employee on behalf of the city to thoroughly and carefully examine each boat herein before a license is granted to operate the same. No boat shall be licensed that is not in a thoroughly safe condition for the transportation of passengers. Inspection and tests of boats hereunder may be ordered by the Council from time to time as it may deem advisable, and the Council shall maintain a constant vigilance to see that all such boats are kept in fitness for public service.

(Code 1987, § 435.40)

Sec. 78-40. Insurance policy.

Before a license shall be delivered hereunder or shall be deposited with the City Clerk, a policy of an insurance company duly licensed to transact such business in the state, insuring the operator of any such boat to be licensed against loss from liability imposed by law for damages on account of bodily injuries or death, or for damages to property resulting from the ownership, maintenance, or use of any boat to be owned or operated under such license and agreeing to pay to any judgment creditor to the extent of the amount specified by reason of such liability, shall be obtained. The policy shall be approved by the City Attorney as to form and compliance with this article. The limit in any such insurance policy or such liability of the insurer on account of the ownership, maintenance, and use of such boat shall not be less than $100,000.00 for bodily injuries or death of one person and $300,000.00 on account of any one accident resulting in injuries to and/or death of more than one person, and a total of $100,000.00 liability for damage to property of others arising out of any one accident. Each such insurance policy shall contain a provision that the insurance company shall give the City Clerk 30 days' notice of cancellation by registered mail. The form and sufficiency of such policy and the surety thereon shall be subject to the approval of the City Council.

(Code 1987, § 435.45)

Secs. 78-41—78-50. Reserved.

ARTICLE III. COMMERCIAL BOAT DOCKS

Sec. 78-51. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized commercial dock use area means that area in the lake which may be used for commercial boat docks, moorings, boat storage, or which may be enclosed on three sides for any of these purposes.

Business of docking or storing of boats means renting or otherwise providing space for docking, anchoring, or storing three or more boats or floating structures belonging to persons other than the owner of the dock or property upon which said boat or structures are docked or stored or adjacent to which said boats are moored.

Commercial boat dock means providing space for docking, mooring at buoy, or otherwise keeping or storing of boats, barges, or other floating structures used in a trade or business or providing through the joint use of lakeshore property such space for boats or watercraft belonging to persons or families who are part of a group or association.

Dock means any wharf, pier, or other structure constructed or maintained in the lake, whether floating or not, including all "Ls" or "Ts" or posts which may be a part thereof, whether affixed or adjacent to the principle structure.

Mooring means any buoy, post, structure, or other device at which a watercraft may be moored and which is surrounded by navigable water.

Site means any shoreline lot, parcel, or other piece of property legally subdivided and recorded in the office of the county recorder or registrar of titles.

Stored means any boat or other watercraft docked or moored for more than 12 hours.

(Code 1987, § 436.01)

Sec. 78-52. License required.

No person, association of persons, or families, whether incorporated or not, through any arrangement, whether through common or corporate ownership or otherwise, shall operate, carry on, or be engaged in the trade or business of docking, mooring, anchoring, keeping or storing of boats or make any arrangement for the use or joint use of lakeshore property for such dockage of boats and watercraft within the corporate limits of this city without having first obtained a license. Any person desiring such a license shall make application in writing to the City Council, which application shall be signed by the applicant and filed with the City Clerk. The application shall set forth the name and residence of the applicant, exact location at which the applicant proposes to carry on his business or use of lakeshore property, and whether he is then or has heretofore been engaged in a similar business. The application shall be accompanied by a sketch of the proposed facilities, including location and type of buoy to be used therewith and the parking facilities as well as a statement outlining the manner, extent, and degree of use contemplated. The clerk shall present the application to the City Council at its next regular meeting after the filing thereof.

(Code 1987, § 436.05)

Sec. 78-53. Regulation of commercial boat docks.

In the event boat storage facilities are provided, any person owning or operating a commercial boat dock shall comply with the following minimum standards:

(1) *Fire hazards.* All watercraft shall be stored in such a manner that they do not create a fire hazard.

(2) *Gasoline storage.* Any gasoline offered for sale or stored on the premises shall be placed in tanks or containers as may be required by the City Council and by city and state fire regulations, and such tanks or containers shall be stored underground or such distance from the storage facilities so as not to create a danger in the community.

(3) *Gasoline sales.* Gasoline sales shall not be made from the dock at which customer's watercraft are stored.

(4) *Buoys.* The location and marking of all buoys shall be subject to the regulation of the Council.

(5) *Orderly maintenance.* The premises shall at all times be maintained in a neat and orderly manner.

(6) *Parking.* Off-street parking shall be provided as follows: one off-street parking stall for each three rental boat stalls, buoys, or slips available to customers or joint users.

(7) *No residential use.* No boat or other floating structure tied up or connected to such dock facilities shall be used as a permanent, temporary, or seasonal residence.

(Code 1987, § 436.10)

Sec. 78-54. Limitation of commercial dockage.

No person shall anchor, keep, moor, dock, or store a boat, canoe, raft, barge, or other watercraft within the harbor limits of the city except at a dock or buoy which is in compliance with the terms of this article, except, however, that a riparian owner may dock or store boats and other watercraft in the natural body of water adjoining his property in a manner which will not interfere with boat traffic or legitimate use of the lake or infringe upon the riparian rights and privileges of abutting property owners.

(Code 1987, § 436.15)

Sec. 78-55. Regulation of commercial boat docks.

(a) *Prohibition.* No person shall use any area of the lake as an authorized commercial dock use area, for commercial docks, moorings, or boat storage unless such use is specifically permitted and licensed under the provisions of this article.

(b) *Authorized commercial dock use area.* An authorized commercial dock use area is described as follows:

(1) *Length.* The authorized commercial dock use area for sites bordering on the lake extends into the lake a distance equal to the site lake frontage to be measured at right angles to the side site lines and, except as provided herein, shall not extend into the lake a distance greater than 200 feet to be measured in a line parallel to the side site line as extended into the lake. Notwithstanding the provisions of this subsection, commercial docks in existence or authorized by other governmental agencies and under construction on the effective date of the ordinance from which this article is derived shall be considered nonconforming uses and may continue in existence without the necessity for the granting of a variance under the provisions of section 78-59. Said nonconforming docks shall be subject to the provisions and limitations set forth in section 129-35 and of all regulations subsequently adopted regarding nonconforming uses.

(2) *Width.* The authorized dock use area for sites bordering on the lake is limited in width by the setback limitations prescribed herein. The setback from side site lines as extended in the lake shall be as follows: For that portion of the length of the authorized commercial dock use area which extends from the shore, the setback shall be:

a. Zero to 50 feet: ten feet.

b. 50 to 100 feet: 15 feet.

c. 100 to 200 feet: 20 feet.

(c) *Structures not to obstruct.* No licensed dock, mooring, or other structure shall be so located as to obstruct a navigable channel, or so as to obstruct reasonable access to any other

dock, mooring area, or similar structure authorized under this article. No dock, mooring area, or similar structure shall be located or designed so that it unnecessarily requires or encourages boats using it to encroach into any other authorized commercial dock use area or into individually owned private dock areas.

(d) *Space between boats.* Reasonable space shall be provided in mooring areas to allow navigation freely between moored watercraft.

(e) *Extensions.* No commercial dock or mooring area shall extend across the extended zone line between sites zoned differently by the city.

(f) *Unusual configurations.* Where the provisions of this article would cause the authorized commercial dock use area of two or more sites to overlap, or where there is any other unusual configuration of shoreline or extended lot lines which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the lake for docks, mooring areas, or other structures or for reasonable access thereto, the owner of any of the affected sites may apply to the Council for a variance.

(g) *Construction, repair and maintenance standards.*

(1) *General rule.* All commercial docks, mooring, and other structures shall be constructed and maintained as provided in this article.

(2) *Materials.* Docks, moorings, and other structures, whether temporary or permanent, shall be constructed of such materials and in such a manner as the owner determines, provided that they shall be so built and maintained that they do not constitute a hazard to the public using the waters of the lake.

(3) *Safety.* Commercial docks or mooring areas may be constructed of such materials and in such a manner as the owner determines provided that such dock or mooring area shall be so built and maintained as to be safe for use by the public.

(4) *Lighting.* Commercial docks shall be suitably and adequately lighted in accordance with City regulations. No oscillating, rotating, flashing or moving sign or light may be used on any dock. Dock lighting shall not be directed toward the lake in such a manner that it impairs the vision of or confuses operators of watercraft.

(5) *Signs.* No advertising signs may be displayed from any dock other than an identifying sign, which shall be no larger than six square feet in area.

(6) *Fuel and power supply.* Installation of electrical and fueling facilities on commercial docks, moorings, and other structures shall be in accordance with applicable building codes and subject to state and local inspection procedures. Persons making such electrical or fueling installations shall maintain records of compliance with state and local codes and regulations.

(7) *Factors considered.* In exercising its discretion in granting or denying licenses, the Council may consider, among other things, the following:

a. Whether the commercial dock or mooring area will be structurally safe for use by the intended users.

b. Whether the facility will comply with the regulations contained in this article.

c. Whether the proposed facility will create a volume of traffic on the lake in the vicinity of the facility which will tend to be unsafe or which will cause an undue burden of traffic upon the lake in the vicinity of the facility.

d. Whether the proposed facility will be compatible with the adjacent development.

e. Whether the proposed facility will be compatible with the maintenance of the natural beauty of the lake.

f. Whether the proposed facility will affect the quality of the water of the lake and the ecology of the lake.

g. Whether the proposed facility, by reason of noise, fumes, or other nuisance characteristics, will tend to be a source of nuisance or annoyance to persons in the vicinity of the facility.

h. Whether adequate sanitary facilities will be provided in connection with the proposed facility.

(Code 1987, § 436.20)

Sec. 78-56. License fee and license applications.

(a) *Expiration and fee.* Any license issued by the Council pursuant to this article shall expire on April 1 next following its issuance. The base fee for new applications and for renewal applications, plus an additional fee for each boat accommodation, shall be as established by the city.

(b) *License applications for docks.* License applications shall be obtained at the city offices. Such applications shall state completely the information required by section 78-52 and by the City Manager or the dock inspector.

(c) *Application filing.* Applications for licenses shall be filed with the dock inspector at the city offices, who shall recommend to the City Council that the license be approved or denied. No license will be recommended or authorized until the dock inspector determines that the proposed dock complies substantially with the terms of all city ordinances.

(d) *Application deadlines.* Applications for dock licenses shall be made between January 1 and the last day of February of each year.

(e) *Late applications.* All applications received on or after March 1 shall be subject to a late fee as established by the city.

(Code 1987, § 436.25; Ord. No. 01-2001, 2-25-2001)

Sec. 78-57. Issuance of license.

(a) Any license issued by the Council pursuant to this article may contain restrictions as the Council deems necessary to protect the health, welfare, and safety of the general public from overburdening the primary harbor limits of this city and the lakeshore at any particular location, having in mind (among other things) parking problems, safety requirements for docking and mooring, and contamination of the lake for boat traffic of all kinds. Each license, when issued, shall contain a statement of the restrictions and conditions, and said license with such restrictions and conditions shall be conspicuously posted on the licensed premises.

(b) No license shall be issued by the Council pursuant to this article authorizing a commercial boat dock or boat docking or storage upon property within the confines of the city contrary to the regulations and limitations applying to said property set forth in the city's zoning

ordinance.

(Code 1987, § 436.30)

Sec. 78-58. Inspection.

The City Council or such officer as may be designated by the Council for the purposes may, at reasonable times, inspect or cause to be inspected any such licensed commercial boat dock, and if it shall appear that such dock has not been constructed or is not being maintained or used in accordance with the license issued by the Council, or in accordance with the terms of this article, the Council, by its City Manager, shall notify the owner thereof in writing of the way such dock does not comply with the license required in this article, after which the owner shall have ten days to remove the dock or make the same comply with the terms of the license and this article. If the violation is not corrected within the allotted time, the Council shall revoke the license. Notification under this article shall be made in writing to the owner of the dock at the address given in the application. Failure to have a valid license in force shall be prima facie evidence of a violation of this article.

(Code 1987, § 436.35)

Sec. 78-59. Variances.

(a) *When granted.* Where practical difficulties or particular hardships occur, the Council, upon application of a person affected, may permit a variance from the requirements of this article or may require a variance from what is otherwise permitted by this article, provided that such variance with whatever conditions are deemed necessary by the Council does not adversely affect the purposes of this article, the public health, safety, and welfare, or reasonable access to or use of the lake by the public or riparian owners.

(b) *Application.* Applications for variances shall be filed with the City Manager. The application shall contain:

(1) The name and address of the applicant;

(2) The description and location of the property for which the variance is sought;

(3) The variance for which the application is made;

(4) The names and addresses of the owners of abutting sites;

(5) A map or plat of the site for which the variance is sought, and of abutting or other affected sites, showing any existing docks, moorings, or other structures or the proposed location or relocation of any such structures;

(6) The consent of the applicant permitting officers and agents of the city to enter upon the applicant's premises at reasonable times to investigate the application and to determine compliance with any variance which may be granted;

(7) Such other information, such as surveys and photographs, as the City Manager may require to assist the Council in consideration of the application.

(c) *Fee.* The variance application shall be accompanied by an application fee as established by the city. Such fee shall not be refunded at any time after the processing of the application has been commenced.

(d) *Hearings.* Upon receipt of a completed variance application, the City Manager shall schedule a hearing by the Council on the application. The Council may grant a variance

from the literal provisions of this article in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this article. The Council may impose conditions on the riparian owners and users of the lake.

(e) *Violations.* Locating, constructing, installing, or maintaining a commercial dock, mooring, or other structure in a manner different from the terms and conditions of a license or variance which is ordered or permitted is a violation of this article and grounds for rescission of the variance.

(f) *Relation to Lake Minnetonka Conservation District and other governmental agencies.* The provisions of this article shall not supersede any ordinance of the Lake Minnetonka Conservation District or other governmental agencies that are more restrictive in their provisions and application to commercial boat docks and dockage. This article shall not relieve the applicant from obtaining licenses and permits required by other governmental agencies.

(Code 1987, §§ 436.40, 436.45; Ord. No. 01-2001, 2-25-2001)

Secs. 78-60—78-72. Reserved.

ARTICLE IV. CHARTER BOAT USE OF MUNICIPAL DOCKS

Sec. 78-73. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charter boat means any boat or watercraft which is used for the transportation of passengers for a few.

Pilot means the person operating any charter boat.

Greenway municipal dock means the municipal transient mooring located nearest to the Shoreline Drive and Auditors Road intersection and excludes the dockage included in the Commons program for the Villas on Lost Lake Subdivision.

Sec. 78-74. Permit and application required.

Charter Boat shall be parked, moored, stored, placed, kept or tied up to the Greenway dock without first having secured a Charter Boat License from the City of Mound.

Any person desiring to secure such a permit shall make application on a form supplied by the City. Each application shall state, among other things, his or her name, address, type, size and horsepower of the boat(s) for which the application is made, boat license number(s), maximum number of passengers including crew, and other information as requested in the application form. Each such application shall be accompanied by the annual fee and evidence of insurance.

On an initial application for a Charter Boat License, the applicant shall pay with his or her application, a non-refundable investigation fee, and the city shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and contain such additional information as the City may require. If the City deems it in the public interest to have an investigation made on a particular application for renewal of a Charter Boat License, it shall so determine. If the City determines that a comprehensive background and investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the City that issuance would not be in the public interest.

Sec. 78-75. Insurance.

Each application shall be accompanied by an annual fee and by evidence of liability insurance coverage with a minimum limit of $1,000,000 per occurrence. The policy shall provide that no payment of any claim by the insurance company will in any manner decrease the coverage provided for any other claim(s) brought against the insured or the insuring company. The policy shall provide that no cancellation for any cause shall be made by either the insured or the insuring company without 30 days prior written notice to the City. The policies shall be issued in the name of all partners if the licensee is a partnership and in the name of the corporation of other organization if the licensee is a corporation or other organization. The policy shall name the City as an additional insured, shall be filed with the City Manager, shall be subject to approval of the City Manager as to form and content and shall be issued by companies duly licensed to do business in the State of Minnesota.

Sec. 78-76. Fee.

The fee for the Charter Boat License shall be as established by the city. The permit fee(s) shall be paid by the applicant to the City at the time the application is submitted.

Sec. 78-77. Non-transferability.

Permits issued under this ordinance shall be non-transferable.

Sec. 78-78. Responsibility of charter boat owner.

Every Charter Boat owner is responsible for the conduct of its pilots while docking, departing, or doing business at any municipal dock. Any violation of this Ordinance by a Pilot shall also be considered as an act of the Charter Boat owner for the purpose of imposing a penalty under this Ordinance.

Sec. 78-79. Garbage/refuse eisposal.

Collection and disposal of garbage/refuse is the responsibility of the Charter Boat owner. Garbage/refuse shall not be placed in the public garbage receptacles near the dock, but shall be removed from the premises by Charter Boat owner or designee.

Sec. 78-80. Alcohol prohibited.

No owner, employee or agent of a licensed Charter Boat which has been issued an “on-sale liquor” or “on-sale wine” license by the Lake Minnetonka Conservation District shall sell, serve, or allow to be consumed any alcoholic beverage while that boat is at the Mound Greenway municipal dock.

Sec. 78-81. License required.

No Charter Boat can utilize the Greenway municipal docks until all appropriate permits have been procured and copies of all licensed have been provided to the City of Mound. This list includes, but is not limited to, the LMCD charter boat license, LMCD liquor license, and Department of Health food permits. It shall be a violation of this Ordinance to begin Charter Boat operations without first having procured any and/or all involved agency permits.

Sec. 78-82. Issuance of permit.

Charter Boat docking permits shall be issued by the City Manager upon submission of a complete and accurate application, submittal of the required insurance information, and copies of any and/or all involved agency permits, including but not limited to, the LMCD Charter Boat permit, the LMCD liquor license, etc. and payment of the permit Charter Boat license fee by the applicant. The granting of a permit under this Section does not assure the holder of a location on the Greenway Municipal Dock, nor give the holder any priority in usage of the slips on the dock.

Sec. 78-83. Prohibited acts.

It shall be a violation of this Ordinance for the owner and/or person operating any boat to do any of the following:

(a) Dock a charter boat at the Greenway municipal dock without a permit.

(b) Dock any boat at the Greenway municipal dock which exceeds any limitations as set forth in a conspicuously posted notice.

Sec. 78-84. Use and display of permit.

Holder of valid Charter Boat permits shall be authorized to dock at a specified Greenway municipal dock for a period of not more than 30 minutes at any one time. Permits shall be displayed on Charter Boats in a prominent location.

Sec. 78-85. Restriction of hours.

All boating, pedestrian or vehicular traffic at the Greenway municipal dock and adjacent public land and docks is prohibited between the hours of 10:30 PM and 5 AM of the following day. No overnight mooring is allowed.

Sec. 78-86. Permit expiration date.

Permits issued under this Ordinance shall expire on December 31 of each year.

Sec. 78-87. Revocation.

Permits may be revoked by the City Council. Grounds for such revocation shall include, but shall not be limited to, any alcohol-related offenses committed by the permit holder or any of his/her agents or employees while operating a charter boat or any other watercraft.

(Code 1987 §437.02; Ord. 12-2006, 7-9-06; Ord. 12-2008, 12-7-08)

Sec. 78-88 - 78-99 Reserved.

ARTICLE V. DOCK LICENSING

Sec. 78-100. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abutting Residence means a residence whose extended lot lines to the shoreline, fall within the City designated dock or slip location as indicated on the approved Dock Location Map and Addendum.

*Applicant means a*ny resident of Mound who completes any of the Dock Program applications, whether they were a site holder from the prior year or submitting an application for the first time.

DCC means Docks and Commons Commission.

Dock means any wharf, pier, boat ramp, mooring buoy or other structure constructed or maintained in, upon, or into the water of a lake from publicly controlled shore land.

Dock Administration means the Finance and Administration Department of the City, the Department's employees, and the Department's designees**.**

Dock Use Area (DUA) means the area for use of installation of dock, lifts, mooring of watercraft and navigation of their watercraft to/from such dock, lift or mooring. Shoreline DUA and extension into lake of the DUA may not be the same lineal footage.

LMCD means the Lake Minnetonka Conservation District.

License means yearly permission from the City of Mound that allows an applicant to either have a dock or moor a watercraft to a City-owned slip all on City controlled shoreline.

License year means March 1st thru the last day of February of the following year.

Lottery means the method of establishing Third Priority and Fourth Priority applicants beginning position on the Wait List.

Moored means parking of a watercraft at a dock or slip.

Multiple slip dock means the City of Mound owned marina-type docking complex.

Non-abutting resident means a resident of Mound residing in an inland property from Lake Minnetonka or a Lake Minnetonka shoreline property on non-dockable shore.

Primary Site Holder means an individual resident to whom the City issues the Dock or Slip license.

Primary Watercraft means the first watercraft declared on a Dock License Application.

Secondary Site Holder means an individual resident who shares a dock site with a Primary Site Holder.

Secondary Watercraft means all additional watercraft declared in excess of Primary Watercraft.

Slip means the mooring location of a watercraft on a City owned multiple slip dock complex.

Site #(Dock) means the shoreline lineal footage marking that represents the center of a Dock Use Area along the shoreline.

Site #(Slip) means the shoreline lineal footage that could indicate either the slip complex access point or the center of the slip complex.

Slip Use Area means the area for use and mooring of declared watercraft. Area means horizontal measurement from the foremost to the aftermost and port to starboard of the watercraft including the bowsprits, decks, anchors, platforms, motors and other equipment and attachments in their normal operating position.

Wait list means the list of current, Third Priority and Fourth Priority, applicants waiting for a dock or slip.

Watercraft Registration means the Watercraft Registration issued by the DNR or US Coast Guard documentation.

(Ord. No. 02-2013, 3-31-13; Ord. No. 05-2013, 5-19-13; Ord. No. 08-2014, 10-26-2014)

Sec. 78-101. Application procedure.

(a) Application Form. Applications for Dock Licenses shall be filed yearly with the Dock Administration at the City offices. Such applications must include:

(1) Full name of the applicant.

(2) Address. Applicant must provide evidence establishing to the reasonable satisfaction of the dock Administration that the applicant is a resident of the City of Mound and resides at the address shown on the application. A current Minnesota Driver's License or Minnesota Identification Card showing residency at the address may be, but is not necessarily, evidence

of residency. Other evidence sufficient to establish residency includes proof that the applicant resides at the address shown on the application in the summer months, that the property is owned by the applicant, and that the property is not occupied during other times of the year by anyone other than applicant or applicant's family, or both.

(3) Phone number(s) of the applicant.

(4) Signature of the applicant. Signature shall guarantee that the applicant will remove the dock and all appurtenances at the expiration, suspension, or revocation of the license if the license is not renewed at expiration. The applicant shall agree that if they do not remove everything, the City is authorized to have them removed and the applicant agrees to pay to the City any and all costs incurred by the City in removal and disposal. The applicant also shall agree that if the City removes the dock, the City is authorized to dispose of any materials or parts which are left on public lands or in public waters and the applicant shall forfeit any right or claim to the materials left on the dock site.

(5) Declaration of Watercraft. At the time of submitting the annual Dock License Application, the applicant will also declare all watercraft that the applicant intends to moor at the dock. Required information for all declared watercraft shall be pursuant to Sec. 78-103 (a).

(6) Fees Paid. The annual application fee and license fee shall be that as established the City Code. Lake Minnetonka Conservation District fees, as established by that organization, must also be paid.

(b) Application Deadlines. All applications shall be made between the first business day in January and must be received at City offices by the last day of February or must have the postmark of the United States Post Office by the last day of February.

(1) Mailing requirements: Mailing is timely under this section if the application, including payment, was in an envelope or other appropriate wrapper, proper prepaid postage and properly addressed and bears the postmark of the United States Postal Service. If the application, including payment, is sent by United States registered mail, the date of registration is the postmark date. If the application, including payment, is sent by the United States certified mail, the date of the United States Postal Service postmark on the receipt given to the person presenting the application, including payment for delivery is the date of mailing.

(2) Mailing, or the time of mailing, may also be established by other available evidence except that the postmark of a private postage meter will not be used as proof of a timely mailing made under this section.

(c) Late Applications.

(1) *Abutting Applicants*: Late fees will be in effect as established by the City.

(2) *New abutting applicants*. A late fee, as established by the City, will only be assessed if the application and fees are not submitted within 30 days after which an abutting resident moves into the City.

(3) *Non-Abutting Applicants*: Primary Site Holders will be given a one-time exception for missing the deadline. The Primary Site Holder will be

required to pay a $100 late fee for applications received between March 1st and March 31st. If the application is received after March 31st, or if this is the second time late, the Primary Site Holder will not be allowed to retain their Second Priority status and must relinquish their dock site. They may, however, apply to be a waitlist applicant if the waiting list application and fees are submitted to City Hall by noon on the day preceding the March DCC meeting.

(4) *Waitlist Applicants:* They will not retain their position on the waitlist.

(d) Refund of Submitted Fees/Surrender of License. An applicant/licensee who is withdrawing from the program and surrendering the dock license may request a refund of fees paid less an administrative fee as established by the City, if a request to terminate is made in writing to the Dock Administration. Requests must be received at City offices by/on March15th or must have the postmark of the United States Post Office by March 15th of the boating season. If an abutting property is sold between March 16th and December 31st, any fees paid by the seller will be credited to the new owner and the seller will not be entitled to any refunds.

(e) One Application per Individual Resident. The owner of an apartment building, rental home or multiple dwelling shall not apply for dock licenses for his renters or lessees. He or she is entitled to make application for a dock license for himself or herself if he or she is a resident of the City.

(f) Wait List Applicants: First time wait list applicants beginning position on the wait list shall be by lottery in accordance with such process as the City Council shall from time to time determine by resolution.

(Code 1987, 439; Ord. No.08-2009, 12-20-2009; Ord. No. 03-2013, 3-31-13; Ord. No.02-2015, 04-05-2015)

Sec.78-102. Licenses.

(a) *License Required.* No person shall moor a watercraft shall erect, keep, or maintain a dock on or abutting upon any public street, road, park, or commons without first receiving a license from the City in accordance with the provisions of this section. Physical licenses will not be issued to licensees who are renewing the same dock site license. Licensees should assume that meeting the requirements of Section 78-101 Application Procedure constitutes a license unless otherwise notified by the Dock Administration. Applicants being assigned a dock site for the first time or changing sites will be sent a physical license within 30 days of the effective date of the assignment or change.

(b) *Licenses Non-Transferable.* Dock licenses issued by the City are personal in nature and may be used only by the Primary or Secondary Site Holder approved by the City, or members of their households. No dock licensed by the City may be rented, leased, or sublet to any person, partnership or corporation. If a licensee rents, leases, sublets, or in any manner charges or receives consideration for the use of his or her dock, his or her license shall be revoked.

(c) *Dock Administration to Issue Licenses.* The Dock Administration shall review all applications. No license shall be issued by the Dock Administration until he or she has first determined that the proposed dock configuration and boat sizes are suitable for the specific dock location as identified on the approved Dock Location Map Addendum.

(d) *License Priorities.* The Dock Administration shall assign all locations to the applicants upon compliance with this ordinance and subject to reasonable conditions. The following priorities govern the issuance of dock licenses:

(1) First Priority: An abutting resident has first priority for a City designated location within his or her lot lines extended to the shoreline on Lake Minnetonka.

(2) Second Priority: Non-abutting primary site holder applicant or qualified secondary site holder.

(3) Third Priority: Wait list applicants. As determined by the lottery and resulting waitlist.

(4) Fourth Priority: Residents living in a home that has dockable, private lake frontage on Lake Minnetonka shall have the last priority each year for a dock on public lands and last priority to become a Secondary Site Holder.

(Code 1987, 439; Ord. No. 08-2014, 10-26-2014)

Sec. 78-103. Regulations.

(a) *Declaration of Watercraft – Requirements.* Watercraft that are moored at a City dock site must be declared on the Dock License Application. The applicant must provide the City with a copy of the current DNR Watercraft Registration or US Coast Guard documentation or recently applied for DNR Watercraft Registration or US Coast Guard documentation for each watercraft, at the time of application. This DNR Registration or US Coast Guard documentation must verify that the watercraft is in the name of the site holder at a City of Mound address. The holder of a dock license shall not keep more than one declared Primary Watercraft at the licensed dock. Secondary Watercraft to be moored at the licensed dock must first be declared with the City of Mound Dock Program.

If a declared watercraft is removed from the City dock program, the site holder may substitute a replacement watercraft upon providing the City with required documentation as stated above. Newly declared replacement watercraft may be subject an additional LMCD fee.

(b) *Allowable Mooring of Non-Owned Watercraft*. Mooring of watercraft not owned by the dock licensee (Primary Site Holder or Secondary Site Holder) is permitted for a period of up to 48 hours, two times in a calendar year. Mooring of watercraft not owned by the dock licensee (Primary Site Holder or Secondary Site Holder) is not permitted for a period in excess of 48 hours unless a Temporary Visiting Dockage Permit has been first obtained by the licensee from the City and the fees established by the City have been paid. All Temporary Visiting Dockage Permits shall contain the DNR registration number or US Coast Guard documentation (and copies of same) of the boat and shall be limited to 21 days. No more than one Temporary Visiting Dockage Permit may be issued in any calendar year to an individual dock licensee.

Unless permitted under the preceding two subsections, no watercraft shall be moored at a City dock site.

(c) *Dock Structure and Dimensions.* Licensed docks shall be erected and maintained by the licensee at his or her sole expense and liability for same. Docks shall not be less than 24" wide or more than 48" in width with the exception that one 72" x 72" section is allowed. All dock structure configurations must stay within the licensee's dock use area as stated on the approved dock location map addendum and shall not infringe on an adjacent city controlled dock site. Further, all dock use areas must conform to current LMCD setbacks from private property. Docks shall not exceed 24 feet in length except where necessary to reach a water depth of 48", using Lake Minnetonka elevation levels of 929.40 feet above sea level. The Dock Administration may also limit the length of a dock if navigability is limited for boats attempting to access their nearby dock site. Channel docks, where navigation is limited and docks must be installed parallel to the shoreline, cannot be less than 24" wide or more than 72" in width. The length shall be limited to current LMCD regulations and shall not infringe on an adjacent dock site. All docks extensions

into the lake shall be placed perpendicular to the shoreline unless conditions warrant otherwise. This shall be at the discretion of the Dock Administration. All docks should be built of sound, aesthetically pleasing materials and be constructed of a standard that is safe for the public's health, safety and welfare as determined by the City. Docks and other appurtenances shall not be unsightly or create a public nuisance. No tire or tires shall be hung or attached on dock posts, dock poles, or on dock hardware.

The Dock Administration may grant exceptions to the provisions of this section in instances where it is found that the exception is necessitated due to unusual circumstances, and if granted would not have a detrimental impact on the public safety or welfare.

(d) *Dock Use Area Maintenance.* The licensee is responsible for the maintenance of their shoreline dock use area. Maintenance shall include, but not limited to, grass cutting and weed removal. If aquatic vegetation is removed from the shoreline and placed in an upland area the site holder is required to dispose of it in a timely manner. Failure to adhere to this could cause for revocation of the license or recommendation for non-renewal of their application.

(e) *Dock Use Area Combining.* Two adjoining, Primary Site Holders may combine their dock use areas into one combined larger dock use area for the installation of one dock. They must, however, continue to apply for and pay for their separate dock site locations. Upon notice to the City of their termination of participation in the combined dock facility, they shall each be entitled to return to such separate dock site locations.

(f) *Secondary Site Holder.* Primary Site Holders may elect to add a Secondary Site Holder. A Secondary Site Holder is a user on a dock that is licensed to a Primary Site Holder. The Secondary Site Holder is not a licensee, and may continue to use the licensed dock only at the discretion of the Primary Site Holder, and subject to the provisions of this section and the following conditions:

(1) The dock site is considered by the Dock Administration as being a shareable location. This is subject to their discretion and can change as boat sizes change or other unforeseen issues arise.

(2) Before being eligible to be a Secondary Site Holder, that individual must have been on the waiting list the previous season and must have renewed their waiting list application for the current season.

(3) No Secondary Site Holder shall have past due property taxes, municipal utility fees, including but not limited to water and sewer bills, and penalties and interest thereon.

(4) The application be amended adding the Secondary Site Holder and includes all information as is stated in Sec.78-101. All applicable fees must be paid at time of adding Secondary Site Holder.

(5) On non-abutting dock sites, a Secondary Site Holder can claim priority rights to become that sites' Primary Site Holder when all of the following have occurred:

a. The Primary Site Holder does not renew his or her application within the timeframe listed within this Section.

b. The Secondary Site Holder has participated in the program a minimum of two consecutive full boating seasons on the site not being renewed. The full boating season requirement is met when the secondary site holder is added between January 1st and May 31st of the license year.

If both of these criteria have not occurred, the City is not obligated to provide a dock or slip to the Secondary Site Holder.

(6) On non-abutting dock sites, a Secondary Site Holder who has shared the same non-abutting dock site with the same Primary Site Holder for 15 full boating seasons or more may request to be a Primary Site Holder on a vacant site.

(g) *Public Lands and Public Water Storage and Removal and Reinstallation.*

(1) Docks and lifts or portions thereof and accessory items shall be removed from the water or public land not later than November 1 if they conflict with the following uses:

- Slide area
- Snowmobile crossings
- Skating rinks
- Trails
- Road access
- Other conditions or circumstances that are determined by the Council to have an adverse affect on adjacent properties.

(2) Unless subject to the removal requirements of paragraph (1), docks and lifts located in channels, protected bays and other areas not generally susceptible to ice flows or ice heaving in the judgment of the Dock Administration may be left in the waters during the winter months. Such docks and lifts may be partially removed, provided that those sections left in public waters are complete. No poles, posts, stanchions or supports standing alone shall remain in public waters.

Docks and lifts must be brought up to the construction standards outlined in Sec.78-103 within 4 weeks after the ice goes out in the spring of the year (approximately May 15). If the dock does not meet construction standards, the procedures as specified in Sec.78-104 will apply.

Storage shall be restricted to dock materials, dismantled docks and dismantled boat lifts on City land designated for dock locations as shown on the approved Dock Location Map and Addendum. Storage shall be done in an orderly, compact, and unobtrusive manner. Storage shall not include watercraft or trailers.

In all areas other than Class C Commons (as indicated on the approved Dock Location Map and Addendum), all docks and associated hardware and lifts must be installed in public waters or removed from public lands between June 1st and September 1st of each year.

(3) All docks, lifts, and accessory items not addressed in paragraphs (1) or (2) above shall be removed from the waters of Lake Minnetonka not later than January 1.

All docks, lifts and accessory items required to be removed under the preceding

provisions, and which are not removed by the stated dates are deemed illegal and subject to removal by the city. The cost of removal by the city and any associated storage costs will be the responsibility of the licensee. Removed items not claimed by the licensee within 30 days after removal will be deemed abandoned to the city, and subject to disposal.

(h) *Docks/Lifts/Accessory Items Installed Without a License*. All docks, lifts and accessory items located on controlled shoreline for which a licenser was not issued is deemed illegal and subject to removal under this subdivision. All installed items will be removed by the city or a designated contractor. Costs of removal/storage/disposal will be the responsibility of the owner of removed materials and must be claimed within 30 days of removal. All items unclaimed after 30 days of removal will be deemed abandoned by the city.

(i) *Removal of Docks Following End of License*. Upon non-renewal or revocation of a dock license, the Primary Site Holder must completely remove the dock, accessory items and lifts from public waters and public land. Items not removed will be deemed abandoned to the City and will be removed by the City or a designated contractor and all costs of removal and disposal will be the responsibility of the last licensee for that dock site.

(j) *Compliance with all laws.* All licensees shall be responsible for themselves, any Secondary Site Holders, guests and invitees in observing all applicable laws including, with out limitation, those intended to preserve peace, quiet and good order. Conviction for a violation of any law in the course of the use of any dock or slip, will subject the licensee to the enforcement and penalty provisions of this chapter.

(k) *Dock Location Map and Addendum.* Docks shall be located in accordance with the approved Dock Location Map and Addendum. These shall be maintained by the Dock Administration and kept on file in the City Offices. Such Dock Location Map and Addendum shall contain the following information:

(1) City controlled shoreline on Lake Minnetonka.

(2) Lineal footage markings for purposes of establishing dock locations.

(3) Shoreline Classifications and definitions of such.

(4) Addendum shall include: Site #, shoreline classifications, abutting or non-abutting site, shoreline location name, designation of being a dock site or slip site, Slip Use Area, abutting site addresses. Current restrictions on dock site locations such as one-sided dock and site removal at non-renewal, and any information regarding any variance granted by the LMCD or other permitting agency, shall also be listed.

(5) Access points, and other relevant information as is necessary to review dock locations and to allow the City Council and the Dock Administration to protect the public lands and public water.

(l) *Review of Map*. At least once a year, the Dock Administration will present to the Docks and Commons Commission its recommendations for changes to the Dock Location Map and Addendum. This review shall occur between September 1 and December 31 before each new boating season. The DCC's recommended changes must be considered by the City Council on or

before January 15. Final approval of the Dock Location Map and Addendum shall be made by the City Council. At any point in time the City Council may make changes to the Dock Location Map and Addendum. These changes may include, but not limited to, removal or addition of sites or slips.

(Code 1987, 439; Ord. No. 08-2009, 12-20-2009; Ord. No. 08-2014, 10-26-2014; Ord. No. 2-2015, 04-05-2015)

Sec. 78-104. Enforcement

(a) *Failure to Declare Watercraft.* Mooring of an undeclared watercraft will result in the imposition of a civil penalty against the dock license holder as established by the City. The civil penalty will be forgiven if the dock license holder declares the watercraft within 5 business days. If, after such 5 day period, the watercraft is not declared and the watercraft is still moored at the licensed dock the Dock Administration will recommend to the City Manager that the Dock License and any watercraft declarations issued for all watercraft moored at that dock be revoked for the balance of the Dock License year, and that the holder not be eligible to apply for a Dock License for the next following license year. Additionally, no new dock license will be issued following such revocation until all unpaid civil penalties and any delinquent dock program related fees or penalties have been paid in full. Further, watercraft may be impounded and all associated costs will be the responsibility of the watercraft owner.

(b) *Undeclared Watercraft – Right to Impound*. Undeclared moored watercraft not in licensee's name and not given permission by licensee to be moored are deemed illegal, and will be impounded by the City. Damage to watercraft during impound/storage will not be the City of Mound responsibility. All associated costs of impound/storage will be the responsibility of the watercraft owner and watercraft must be claimed within 30 days of removal. Unclaimed watercraft after 30 days of removal will be deemed abandoned to the City.

(c) *Denial, Suspension or Revocation of License*

(1) No license shall be issued to any applicant with past due property taxes, civil penalties related to Dock Program, and any other delinquent fees or penalties related to the Dock Program, municipal utility fees, including but not limited to water and sewer bills, and penalties and interest thereon. If said past due obligations are not paid by April 15th of the license year, all dock rights will be revoked immediately.

(2) If the licensee has not maintained a previously licensed dock, the Dock Administration may recommend to the City Manager that their existing license be revoked, and the licensee's priorities under this section be forfeited for the current year and for the next boating season.

(3) The license will be revoked or suspended by the Dock Administration for non-compliance with any of the requirements of this chapter.

(4) If the licensee has not completed a pending correction order concerning a stairway or structure used to access the dock, the Dock Administration may recommend to the City Manager that their existing license be revoked, and the licensee's priorities under this Section 438 be forfeited for the current year and for the next boating season.

(5) The City may at any reasonable time inspect or cause to be inspected any dock erected or maintained upon or abutting upon any public street, road, park, or commons. If it appears that any dock has not been constructed or properly maintained, the area surrounding the dock site has not being maintained in accordance with this section, or dock is not consistent with plans or location approved by the Council, the City shall notify the licensee in writing of such violation(s). The licensee shall have ten days after receiving such notice of violation to remove such dock or make the same comply with the terms of this section. In the event that licensee shall fail, neglect or refuse to remove such dock or make the same comply with the terms of this section within that ten days, the license shall be revoked by the City and notice of such revocation shall be directed to licensee.

(d) *Notices.* All notices of revocation, suspension, non-renewal, or denial herein required shall be in writing by first class, certified mail or by personal service, directed to the licensee at the address given in the application.

(e) *Appeal.*

(1) *To City Manager.* The licensee may appeal the notice to the City Manager at any time within 10 days of the date of receipt by serving a written notice of appeal on the City Clerk. Upon such notice of appeal, the City Manager or the City Manager's designee will conduct a hearing on the matter at a date and time reasonably convenient to the holder, but in no event later than 20 days following the date the notice of appeal is served on the City Clerk. If following the hearing, the City Manager, or designee, finds that the licensee was in violation of the provisions of this section the City Manager or designee may revoke the Dock License of the dock license holder for the current license year, and may disqualify the holder from applying for or receiving a Dock License for the next following license year, and until any civil penalties have been paid in full. The City Manager will notify the licensee by mail of the decision.

(2) *To City Council.* The licensee may appeal the decision of the City Manager to the City Council at any time within 10 days of the date of receipt by serving a written notice of appeal on the City Clerk. Upon such notice of appeal, the City Council will conduct a hearing on the matter at a date and time reasonably convenient to the holder, but in no event later than 20 days following the date the notice of appeal is served on the City Clerk. If following the hearing, the City Council finds that the licensee was in violation of the provisions of this section the City Council may revoke the Dock License of the dock license holder for the current license year, and may disqualify the holder from applying for or receiving a Dock License for the next following license year, and until any civil penalties have been paid in full.

(Code 1987, 439; Ord. No. 08-2009, 12-20-2009)

Sec. 78-105. Penalty.

Any person or persons who shall violate any of the prohibitions or requirements of this ordinance shall be guilty of a misdemeanor. In addition to any criminal penalties as above provided, the City Council may remove or cause to be removed any dock erected without a

license as required by this Section, or where any license has been revoked as provided by this Section. Removal of unlicensed docks or docks which fail to comply with the City Code will be at the expense of the owner or licensee. No person convicted of violating City ordinances relating to docks will be issued a dock license for the present or for the next boating season, and said person forfeits any priorities set forth in this Article.

Sec. 78-105 - 78-119 Reservd.

(Code 1987, 438)

ARTICLE VI. SLIP LICENSING

Sec. 78-120. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) *Abutting Residence* means a residence whose extended lot lines to the shoreline, fall within the City designated dock or slip location as indicated on the approved Dock Location Map and Addendum.

(b) *Applicant* means any resident of Mound who completes any of the Dock Program applications, whether they were a site holder from the prior year or submitting an application for the first time.

(c) *DCC* means the Docks and Commons Commission.

(d) *Dock* means any wharf, pier, boat ramp, mooring buoy or other structure constructed or maintained in, upon, or into the water of a lake from publicly controlled shore land.

(e) *Dock Administration* means the Finance and Administration Department of the City, the Department's employees, and the Department's designees.

(f) Dock Use Area (DUA) means the area for use of installation of dock, lifts, mooring of watercraft and navigation of their watercraft to/from such dock, lift or mooring. Shoreline DUA and extension into lake of the DUA may not be the same lineal footage.

(g) *LMCD* means the Lake Minnetonka Conservation District.

(h) *License:* Yearly permission from the City of Mound that allows an applicant to either have a dock or moor a watercraft to a City-owned slip all on City controlled shoreline.

(i) *License Year* means March 1st thru the last day of February of the following year.

(j) *Lottery* means the method of establishing Third Priority and Fourth Priority applicants beginning position on the Wait List.

(k) *Moored* means the parking of a watercraft at a dock or slip.

(l) *Multiple Slip Dock:* means the City of Mound owned marina-type docking complex.

(m) *Non-Abutting Resident* means a resident of Mound residing in an inland property from Lake Minnetonka or a Lake Minnetonka shoreline property on non-dockable shore.

(n) *Primary Site holder* means an individual resident to whom the City issues the Dock or Slip license.

(o) *Primary Watercraft* means the first watercraft declared on Dock License Application.

(p) *Secondary Site holder* means an individual resident who shares a dock site with a Primary Site Holder.

(q) *Secondary Watercraft* means all additional watercraft declared in excess of Primary Watercraft.

(r) *Slip* means mooring location of a watercraft on a City owned multiple slip dock complex.

(s) *Site #(Dock)* means the shoreline lineal footage marking that represents the center of a Dock Use Area along the shoreline.

(t) *Site #(Slip)* means shoreline lineal footage that could indicate either the slip complex access point or the center of the slip complex.

(u) *Slip Use Area* means the area for use and mooring of declared watercraft. Area means horizontal measurement from the foremost to the aftermost and port to starboard of the watercraft including the bowsprits, decks, anchors, platforms, motors and other equipment and attachments in their normal operating position.

(v) *Wait list* means the list of current Third Priority and Fourth Priority applicants waiting for a dock or slip.

(w) *Watercraft Registration* means the watercraft Registration issued by the DNR or US Coast Guard documentation.

(Code 1987, 439; Ord. No. 08-2014, 10-26-2014)

Sec. 78-121. Application Procedure

(a) *Application Form.* Applications for slip licenses shall be filed yearly with the Dock Administration at the City offices. Such applications must include:

(1) Full name of the applicant.

(2) Address – Applicant must provide evidence establishing to the reasonable satisfaction of the dock Administration that the applicant is a resident of the City of Mound and resides at the address shown on the application. A current Minnesota Driver's License or Minnesota Identification Card showing residency at the address may be, but is not necessarily, evidence of residency. Other evidence sufficient to establish residency includes proof that the applicant resides at the address shown on the application in the summer months, that the property is owned by the applicant, and that the property is not occupied during other times of the year by anyone other than applicant or applicant's family, or both.

(3) Phone number(s) of the applicant.

(4) Signature of the applicant.

(5) Watercraft liability insurance company and policy # showing that the insured is in the name of the applicant.

(6) Declaration of Watercraft. At the time of submitting the annual multiple slip license application, the applicant will declare the watercraft that the applicant intends to moor at the slip. Required information for declared watercraft shall be pursuant to Sec.78-122 (1).

(7) Fees Paid. The annual application fee and license fee shall by the City. Lake Minnetonka Conservation District fees, as established by that organization, must also be paid.

(b) Application Deadlines. All applications shall be made between the first business day in January and must be received at City offices by the last day of February or must have the postmark of the United States Post Office by the last day of February.

(1) Mailing requirements: Mailing is timely under this section if the application, including payment, was in an envelope or other appropriate wrapper, proper prepaid postage and properly addressed and bears the postmark of the United States Postal Service. If the application, including payment is sent by United States registered mail, the date of registration is the postmark dates. If the application, including payment, is sent by the United States certified mail, that date of the United States Postal Service postmark on the receipt given to the person presenting the application, including payment, for delivery is the date of mailing.

(2) Mailing or the time of mailing may also be established by other available evidence except that the postmark of a private postage meter will not be used as proof of a timely mailing made under this section.

(c) Late Applications.

(3) Abutting Applicants: Late fees will be in effect as established by the City.

(4) New abutting applicants: A late fee, as established by the City, will only be assessed if the application and fees are not submitted within 30 days after which an abutting resident moves into the City.

(5) Non-Abutting Applicants: Primary Site Holders will be given a one-time exception for missing the deadline. The Primary Site Holder will be required to pay a $100 late fee for applications received between March 1st and March 31st. If the application is received after March 31st or if this is the second time late, the Site Holder will not be allowed to retain their 2nd priority status and must relinquish their slip site. They may, however, apply to be a waitlist applicant if the waiting list application and fees are submitted to City Hall by noon on the day preceding the March DCC Meeting.

(6) Waitlist Applicants: They will not retain their position on the waitlist.

(d) Refund of Submitted Fees/Surrender of License. An applicant/licensee who is withdrawing from the program and surrendering the slip license may request a refund of fees paid less an administrative fee, as established by the City, if a request to terminate is made in writing to the Dock Administration. Requests must be received at City offices by/on March15th or must have the postmark of the United States Post Office by March 15th of the boating season.

(e) One Application per Individual Resident**.** The owner of an apartment building, rental home or multiple dwelling shall not apply for slip licenses for his renters or lessees. He or she is entitled to make application for slip license for him or herself if he or she is a resident of

the City.

(f) Wait List Applicants: First time wait list applicants beginning position on the wait list shall be by lottery in accordance with such process as the City Council shall from time to time determine by resolution.

(Code 1987, 439; Ord. No. 09-2009,12-20-2009; Ord. No. 08-2014, 10-26-2014)

Sec. 78-122. Licenses.

(a) *License Required.* No person shall moor a watercraft at a City-owned multiple slip complex without first receiving a license from the City in accordance with the provisions of this Article. Physical licenses will not be issued to licensees who are renewing the same slip license. Licensees should assume that meeting the requirements of Section 78-121 Application Procedure constitutes a license unless otherwise notified by the Dock Administration. Applicants being assigned a slip site for the first time or changing sites will be sent a physical license within 30 days of the effective date of the assignment or change.

(b) *Licenses Non-Transferable.* Slip licenses issued by the City are personal in nature and may be used only by the site holders or members of their households. No slip licensed by the City may be rented, leased, or sublet to any person, partnership or corporation. If a licensee rents, leases, sublets, or in any manner charges or receives consideration for the use of his or her slip, his or her license shall be revoked.

(c) *Dock Administration to Issue Licenses.* The Dock Administration shall review all applications. No license shall be issued by Dock Administration until it has first determined that the boat size as listed on the application is in compliance with the Slip Use Area limitations on the approved Dock Location Map Addendum.

(d) *License Priorities, for all slip locations except Villas on Lost Lake Slips*. The Dock Administration shall assign all locations to the applicants upon compliance with this ordinance and subject to reasonable conditions. The following priorities govern the issuance of slip licenses for all slips except the slips at the Villas on Lost Lake:

(1) First *Priority:* An abutting resident has first priority for a City designated location within his or her lot lines extended to the shoreline on Lake Minnetonka. Nothing in this provision shall restrict a resident from requesting and receiving a location on an available multiple slip located within the extended lot lines of his or her property.

(2) *Second Priority:* Non-abutting site holder applicant.

(3) *Third Priority:* Wait list applicants. As determined by the lottery and resulting waitlist.

(4) *Fourth Priority:* Residents living in a home that has dockable, private lake frontage on Lake Minnetonka shall have the last priority each year for a dock or slip on public lands and last priority to become a secondary site holder.

(e) *License Priorities for Lost Lake Slips ("Lost Lake Slips").* The Dock Administration shall assign all locations to the applicants upon compliance with this ordinance and subject to reasonable conditions. The number of slip licenses available in each of these categories will be determined by the Dock Administration on an annual basis. Every Lost Lake townhome located on Lost Lake Lane or Lost Lake Court in Mound, Minnesota ("Lost Lake Resident"), will be offered one Lost Lake Slip to be charged on an annual basis at the Lost Lake Resident Rate for Primary Slip Holders as established in the City of Mound Fee Schedule. If any Lost Lake Resident declines a Lost Lake Slip, it will be included in the pool of slips rented at the higher rates as established in the City of Mound Fee Schedule.

The following priorities govern the issuance of Lost Lake Slip licenses available in the pool to be issued on an annual basis through the enrollment period ending the last day in February of each year. Beginning March 1st of each year, the Lost Lake Slips will be assigned on a first come-first serve basis until all Lost Lake Slips are rented. The Lost Lake slips in the pool will be rented at the rates established in the City of Mound Fee Schedule for Lost lake Slips at the Non-Lost Lake Resident and Lost Lake Resident Second Slip Rates:

(1) *First Priority:* Mound residents on the current City of Mound Dock Program Wait List who rented a Lost Lake slip in the prior season, based on seniority on the City of Mound Dock Program Wait List.

(2) *Second Priority:* Lost Lake Residents wanting a second slip who rented a second Lost Lake Slip in the prior season.

(3) *Third Priority:* Mound residents on current City of Mound Dock Program Wait List who did not rent a Lost Lake Slip in the prior season, based on seniority on the City of Mound Dock Program Wait List.

(4) *Fourth Priority:* Lost Lake Residents wanting a second slip who did not rent a second Lost Lake Slip in the prior season.

(5) Fifth Priority: Mound residents not on the City of Mound Dock Program Wait List, with priority given to those who held a Lost Lake Slip in the prior season.

(6) Sixth Priority: The general public, including non-Mound residents, with priority given to those who held a Lost Lake Slip in the prior season.

(Ord. No. 09-2012, 11-25-12; Ord. No. 02-2013, 3-31-13; Ord. No. 05-2013, 5-19-13; Ord. No. 03-2014, 3-23-14; Ord. No. 08-2014, 10-26-2014)

Sec. 78-123. Regulations

(a) *Declaration of Watercraft – Requirements*. Watercraft that are moored at a city multiple slip site must be declared on the Multiple Slip License Application and meet the Slip Use Area criteria. The applicant must provide the City with a copy of the current DNR Watercraft Registration or US Coast Guard documentation or recently applied for DNR Watercraft Registration or US Coast Guard documentation for the watercraft, at the time of application. This DNR Registration or US Coast Guard documentation must verify that the watercraft is in the name of the site holder at a City of Mound address.

If a declared watercraft is removed from the city dock program, the site holder may substitute a replacement watercraft which must meet the Slip Use Area criteria, upon providing the City with required documentation (as stated above).

(b) Watercraft Declaration and Use Required by/on May 31st. A licensee must declare the watercraft they intend to moor at the slip on or before May 31st. Further, the declared watercraft for the licensed slip must be moored at the slip no later than May 31st of the boating season for which the license was issued. If inspections disclose that the site holder has not complied with this usage requirement, the City may revoke the license by written notice to the licensee. The site holder will forfeit any fees paid to the City for the slip. The site holder has the right to appeal the revocation. Any such appeal must be filed in writing with the City Manager within 10 days after mailing of the City's notice of revocation. The appeal must specify reasons objecting to the City's decision and any mitigating circumstances or other facts relating to the site holder's failure to declare a watercraft or moor the declared watercraft at the slip. The appeal will first be referred to the Docks and Commons Commission (DCC) for review and recommendation.

Following receipt of the DCC review and recommendation, the City Council will hear the appeal at a regular meeting and will consider any written or oral information presented by the site

holder, the public and City staff. After consideration of such information, the City Council will affirm or reverse the decision to revoke the license. If the decision is affirmed, the City will re-issue the slip to a qualified person upon payment of the full fee for the license.

(c) *Exception to Watercraft Declaration or Use Requirement.* At any time prior to the deadlines stated in (b) the slip license holder may request an exception from the March 31st declaration and use provisions by written request to the Dock Administration stating the facts, circumstances and hardships which would support the requested exception. If the Dock Administration determines that there are circumstances that would create undue hardships for the slip license holder if the March 31st provisions are strictly enforced, the Dock Administration may grant an appropriate exception to the slip license holder. The exception may be limited to a specific watercraft and may be subject to time limitations or other conditions as may be imposed.

(d) *Voluntary Suspension of Slip License*. A licensed slip holder may voluntarily suspend the right to a license for one boating season by written notice to the Dock Administration on or before March 15th of the boating season for which the license is issued. A refund of their paid fees less administrative fees as established by the City, will be issued in a timely manner. The City will sublet the slip to a person from the waiting list. The person who sublets the slip for the season remains on the wait list with the same priority. The original licensee will be entitled to apply for that slip the following year. No person shall be allowed to voluntarily suspend their slip license for two consecutive boating seasons.

A slip licensee who does not comply with the provisions of, or obtain an exception under the regulations of this section, or does not provide written request of voluntary suspension by or on March 15th, will lose all slip rights.

(e) *Multiple Slip Complex Regulations*. The City multiple slip complexes are intended for giving licensed slip holders access to their moored watercraft. Slips shall not be used by people for any other purposes such as swimming or fishing. Watercraft shall be stored entirely within the area of the slip for which it is licensed.

(1) *Spring Installation:* The City's multiple slip complexes will be installed as weather permits and on the contracted installers schedule. Generally, installation is complete by the Friday of Memorial weekend. Once a complex is completely installed with bumpers, the licensed slip holders may begin mooring of their declared watercraft to the slip site.

(2) *Fall Removal:* Slip Holder's watercraft and all items must be removed from the multiple slip complexes by the end of the day on October 15th of each year regardless of what day of the week the 15th falls on. Watercraft moored at the slip complex after the deadline will be subject to a penalty as established by the City. Further, watercraft may be impounded and all associated costs will be the responsibility of the watercraft owner and/or licensee. Other items not removed by the site holder will be removed by the City and disposed of.

(3) *Personal items on Slip Complexes*. There shall be no storage or attachment of personal items on the slip complex. This includes but is not limited to: boat lifts, canopies, storage boxes, benches, canoe or kayak racks.

(4) *Alteration of Slips or Slip complexes:* There shall be no physical alteration, maintenance or repair of the slip complex or individual slips.

(f) *Compliance with all laws.* All licensees shall be responsible for themselves, any Secondary Site Holders, guests and invitees in observing all applicable laws including, with out limitation, those intended to preserve peace, quiet and good order. Conviction for a violation of

any law in the course of the use of any dock or slip, will subject the licensee to the enforcement and penalty provisions of this chapter.

(g) *Dock Location Map and Addendum.* Docks and slips shall be located in accordance with the approved Dock Location Map and Addendum. These shall be maintained by the Dock Administration and kept on file in the City Offices. Such Dock Location Map and Addendum shall contain the following information:

(1) City controlled shoreline on Lake Minnetonka.

(2) Lineal footage markings for purposes of establishing dock locations.

(3) Shoreline Classifications and definitions of such.

(4) Addendum shall include: Site #, shoreline classifications, abutting or non-abutting site, shoreline location name, designation of being a dock site or slip site, Slip Use Area, abutting site addresses. Current restrictions on dock site locations such as one-sided dock and site removal at non-renewal, and any information regarding any variance granted by the LMCD or other permitting agency, shall also be listed.

(5) Access points, and other relevant information as is necessary to review dock locations and to allow the City Council and the Dock Administration to protect the public lands and public water.

(h) *Review of Map*. At least once a year, the Dock Administration will present to the Docks and Commons Commission its recommendations for changes to the Dock Location Map and Addendum. This review shall occur between September 1 and December 31 before each new boating season. The DCC's recommended changes must be considered by the City Council on or before January 15. Final approval of the Dock Location Map and Addendum shall be made by the City Council. At any point in time the

City Council may make changes to the Dock Location Map and Addendum. These changes may include, but not limited to, removal or addition of sites or slips.

(1987, 439; Ord. No. 08-2014, 10-26-2014)

Sec. 78-124. Enforcement

(a) *Failure to Declare Watercraft.* Mooring of an undeclared watercraft will result in the imposition of a civil penalty against the holder of the slip license as established by the City. The civil penalty will be forgiven if the slip license holder declares the watercraft within 5 business days. If, after such 5 day period, the watercraft is not declared and the watercraft is still moored at the slip the Dock Administration will recommend to the City Manager that the slip license and any watercraft declarations issued for watercraft moored at that slip site be revoked for the balance of the license year, and that the holder not be eligible to apply for a license for the next following license year. Additionally, no new license will be issued following such revocation until all unpaid civil penalties and any delinquent dock program related fees or penalties have been paid in full. Further, watercraft may be impounded and all associated costs will be the responsibility of the watercraft owner.

Mooring of a declared watercraft that does not meet the Slip Use Area criteria must be removed immediately or the Dock Administration will recommend to the City Manager that the slip license and any watercraft declarations issued for watercraft moored at that slip site be revoked. Further, watercraft may be impounded and all associated costs will be the responsibility of the watercraft owner.

(b) *Undeclared Watercraft – Right to Impound.* Undeclared moored watercraft not in licensee's name and not given permission by licensee to be moored are deemed illegal, and will

be impounded by the City. Damage to watercraft during impound/storage will not be the City of Mound responsibility. All associated costs of impound/storage will be the responsibility of the watercraft owner and watercraft must be claimed within 30 days of removal. Unclaimed watercraft after 30 days of removal will be deemed abandoned to the city.

(c) *Denial, Suspension or Revocation of License*

(1) No license shall be issued to any applicant with past due property taxes, civil penalties related to Dock Program, and any other delinquent fees or penalties related to the Dock Program, municipal utility fees, including but not limited to water and sewer bills, and penalties and interest thereon. If said past due obligations are not paid by April 15th of the license year, all slip rights will be revoked immediately.

(2) The license will be revoked or suspended by the Dock Administration for non-compliance with any of the requirements of this chapter.

(d) *Notices.* All notices of revocation, suspension, non-renewal, or denial herein required shall be in writing by first class, certified mail, or by personal service, directed to the licensee at the address given on the application.

(e) *Appeal.*

(1) *To City Manager.* The licensee may appeal the notice to the City Manager at any time within 10 days of the date of receipt by serving a written notice of appeal on the City Clerk. Upon such notice of appeal, the City Manager or the City Manager's designee will conduct a hearing on the matter at a date and time reasonably convenient to the holder, but in no event later than 20 days following the date the notice of appeal is served on the City Clerk. If following the hearing, the City Manager, or designee, finds that the licensee was in violation of the provisions of this section the City Manager or designee may revoke the license of the slip license holder for the current license year, and may disqualify the holder from applying for or receiving a Slip License for the next following license year, and until any civil penalties have been paid in full. The City Manager will notify the licensee by mail of the decision.

(2) *To City Council.* The licensee may appeal the decision of the City Manager to the City Council at any time within 10 days of the date of receipt by serving a written notice of appeal on the City Clerk. Upon such notice of appeal, the City Council will conduct a hearing on the matter at a date and time reasonably convenient to the holder, but in no event later than 20 days following the date the notice of appeal is served on the City Clerk. If following the hearing, the City Council finds that the licensee was in violation of the provisions of this section the City Council may revoke the license of the slip license holder for the current license year, and may disqualify the holder from applying for or receiving a Slip License for the next following license year, and until any civil penalties have been paid in full.

(Code 1987, 439; Ord. No. 09-2009, 12-20-2009)

Sec. 78-125. Penalty.

Any person or persons who shall violate any of the prohibitions or requirements of this ordinance shall be guilty of a misdemeanor. In addition to any criminal penalties as above provided, the City Council may remove or cause to be removed any watercraft moored without a

license as required by this Section, where any license has been revoked as provided by this Section. Removal of unlicensed watercraft which fail to comply with the City Code will be at the expense of the owner or licensee. This may include, but not limited to, impounding and storage. No person convicted of violating City ordinances relating to slips will be issued a license for the present or for the next boating season, and said person forfeits any priorities set forth in this Article.

PART II

LAND DEVELOPMENT REGULATIONS

Chapter 101

GENERAL AND ADMINISTRATIVE PROVISIONS

Sec. 101-1. Applicability of chapter 1.

The provisions of chapter 1 of this Code apply to this part.

Sec. 101-2. Status.

While this part is a codification of the ordinances pertaining to land development regulations, provisions in Part I of this Code may also pertain to land development. The failure to include provisions in this part does not excuse failure to comply with such provisions.

Sec. 101-3. Land use fees.

(a) *Purpose.* The purpose of this section is to comply with Minn. Stats. § 426.353, subd. 4, which states that a municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to Minn. Stats. §§ 462.351—462.364 or an application for a permit or other approval required under an official control established pursuant to those sections. Fees as prescribed must be by ordinance.

(b) Building and construction fees.

Section	*Description*	*Fee*
105-21	Demolition permit – Demolition permit fees are based on valuation and require a regular building permit	
105-24	Residential heating, air conditioning, and gas piping permit fees:	
	For EACH heating or air conditioning unit, including air exchange units, bath/kitchen fans, in-floor heat systems, gas logs/fireplaces, factory wood burning and factory fireplaces – minimum 2 units, maximum 6 units	$38.00
	For EACH gas fitting or connection, with a $25.00 minimum on gas fitting (no state surcharge)	$12.50
	Gas line/gas piping only	$38.00
	Masonry fireplaces require a building permit with plans; fee is based on valuation	
	Residential Fixture Maintenance (plumbing and mechanical):	$40.00
	This permit is for replacing a previously existing fixture or appliance where only disconnecting and reconnecting of existing pipes or ducts is to be done. This fee includes one inspection trip. *Examples of Fixture Maintenance Permits: sink, faucet, water heater, water softener, furnace replacement	
	Commercial heating, air condition, and gas piping permit fees:	
	Plumbing and Mechanical permit fees based on valuation	

	Plumbing minimum	$75.00
	Mechanical minimum	$75.00
	Gas line ($25.00 minimum with mechanical permit) no state surcharge	$12.50
	Gas line only	$38.00
125-31	Trailers	$38.00
	Occupancy permit	100.00
125-5	Appeal to applicant	50.00
38-1	Public lands permit (major) (value plus $1,000.00)	200.00*

*Fee applies only if public benefit is not derived

105-21 Fees for building permits, fire suppression, inspection, and plan check shall be as described below

Total Valuation	*Fee*
$0.00 to $500.00	$38.50
$501.00 to $2,000.00	38.50, plus 3.36 for each add. 100.00 over 500.00 or fraction
$2,001.00 to $25,000.00	88.90, plus 15.40 for each add. 1,000.00 over 2,000.00 or fraction
$25,001.00 to $50,000.00	443.10, plus 11.11 for each add. 1,000.00 over 25,000.00 or fraction
$50,001.00 to $100,000.00	720.85, plus 7.70 for each add. 1,000.00 over 50,000.00 or fraction
$100,001.00 to $500,000.00	1,105.85, plus 6.16 for each add. 1,000.00 over 100,000.00 or fraction
$500,001.00 to $1,000,000.00	3,569.85, plus 5.23 for each add. 1,000.00 over 500,000.00 or fraction
$1,000,001.00 and up	6,184.85, plus 4.02 for each add. 1,000.00 over 1,000,000.00 or fraction

Other inspections and fees	*Fee*
Plan Check Fee (residential maintenance, mechanical and plumbing permits are exempt)	65% of the permit fee for residential building projects and all commercial projects
State Surcharge Fee – per MN Statute 326B.148. State Surcharge applies on all permits unless otherwise noted.	Based on the currently adopted State Surcharge Table

Inspections outside of normal business hours	$60.00 per hour (two-hour min.)
Re-inspection fee	$55.00
Inspections for which no fee is specifically indicated	$60.00 per hour
Site inspection fee (residential)	$50.00
Site inspection fee (commercial)	$90.00
Additional plan review for changes	$60.00 per hour (one hour min.)
Pre-move inspection	$165.00
Moved-in structure (not including foundation, interior remodel, etc.)	$275.00
Manufactured home installation plus state surcharge and requires a regular building permit if also doing basement, foundation, garage or entryway, fees are based on sq. ft. State Table	$275.00
Photocopying incomplete applications 8 ½ x 11 black/white	$.25
Photocopying incomplete applications 8 ½ x 11 color	$1.00
Contractor License look-up fee and lead certification look-up fee	$5.00
Special investigation fee (Work started without obtaining a permit. Applies even if no permit is pulled.)	100% of permit fee
Refunds: 80% of building permit fees on projects not yet started (within 90 days of permit issuance by municipality). No refund on plan review fees or maintenance permits	
Electrical Inspections	See Electric Application
Residential Maintenance Permit Fees:	
Re-Roof	$75.00
Re-Side (excludes stucco work – building permit required)	$75.00
Re-Window (if opening is not altered)	$75.00
Exterior Door (if opening is not altered)	$75.00
Garage Door (if opening is not altered)	$75.00
Fence – any fence over 6’ requires a building permit (based on valuation)	
Shed – any shed over 120 square feet requires a building permit (based on valuation)	

Commercial Project Fees:

Building permit fees are based on valuation, including re-roof and re-side projects

Fire Sprinkler Systems require regular building permit; fees based on valuation (no state surcharge)

Fire Alarm Systems require regular building permit; fees based on valuation

(c) *Plumbing fees.*

Section	*Description*	*Fee*
	Residential: Per fixture with a minimum of $75.00	$7.50
	Residential Fixture Maintenance (plumbing and mechanical):	$40.00
	This permit is for replacing a previously existing fixture or appliance where only disconnecting and reconnecting of existing pipes or ducts is to be done. This fee includes one inspection trip. *Examples of Fixture maintenance Permits: sink, faucet, water heater, water softener, furnace replacement	
105-21	Per 100 feet of pipe or fraction	$8.00
	Per 100 feet of repair or fraction	
	Outside sewer and/or water inspection	$35.00
105-21	Additional inspections	$10.00
	Commercial plan review (plumbing permits)	
	Water distribution and drain, waste, and vent systems, including interceptor, separator or catch basin	
	25 or fewer drainage fixture units	$150.00
	26 to 50 drainage fixture units	$250.00
	51 to 150 drainage fixture units	$350.00
	151 to 249 drainage fixture units	$500.00
	250 or more drainage fixture units	$3.00 per unit (max. of $4,000.00)
	per interceptor, separator or catch basin	$70.00
	Building sewer service only	$150.00
	Building water service only	$150.00
	Building water distribution (no drainage system)	$5.00 per fixture unit or $150.00, whichever is greater

Storm drainage system	$150.00 min. (or)
per drain opening (maximum of $500.00)	$50.00
per interceptor, separator, or catch basin	$70.00
Manufactured home park or campground	
1 to 25 sites	$300.00
26 to 50 sites	$350.00
51 to 125 sites	$400.00
more than 125 sites	$500.00
Revision to previously reviewed or incomplete plans	
Review of plans for which commissioner has issued two or more requests for additional information	$100.00 per review or 10% of orig. fee, whichever is greater
Proposer-requested revision	
No increase in project scope	$50.00 or 10% of orig. fee, whichever is greater
Increase in project scope	$50.00 plus differ. between orig. and revised project fee

(d) *Electrical permits.*

(1) *Schedule.* The city electrical inspection fees shall be paid according to subsection (d)(2)a of this section.

(2) *Fee for each separate inspection.* The fees for the permit for each separate electrical inspection is as follows:

a. The minimum fee for each separate inspection of an installation, replacement, alteration, or repair, up to four circuits is $40.00.

b. The fee for each separate inspection of the bonding for a swimming pool, spa, foundation, an equipotential plane for an agricultural confinement area, or similar installation shall be $40.00. Bonding conductors and connections require an inspection before being concealed.

(3) *Fees for service.* Fees for services, temporary services, generators, other power supply sources, or feeders to separate structures. The inspection fee for the installation, addition, alteration, or repair of each service, change of service, temporary service, generator, other power supply source, or feeder to a separate structure is:

a. Ampere of 0 to and including 200 ampere capacity, $50.00.

b. Amperes of 201 to and including 400 ampere capacity, $100.00.

c. Amperes of 401 to and including 800 ampere capacity, $200.00.

d. Amperes of 801 and above, $300.00.

Where multiple disconnects are grouped at a single location and are supplied by a single set of supply conductors the cumulative rating of the overcurrent devices shall be used to determine the supply ampere capacity.

(4) *Fee for circuits/feeders and transformers.* The inspection fee for the installation, addition, alteration, or repair of each circuit, feeder, feeder tap, or set of transformer secondary conductors, including the equipment served, is:

a. Fees for circuits, feeders, feeder taps, sets of transformer secondary conductors and transformers.

1. Amperes 0 to and including 200 ampere capacity, $10.00.

2. Ampere capacity above 200, $15.00.

b. The fee for transformers for light, heat, and power is:

1. Transformers up to 10 KVA, $20.00.

2. Transformers over 10 KVA, $30.00.

(5) Limitations to fees of subsections (d)(3) and (4) of this section.

a. *New one-family and two-family dwellings.* Fees include up to three inspection trips per dwelling. The fee for a new one-family dwelling and each dwelling unit of a new two-family dwelling with a supply of:

1. Up to 200 amperes, $125.00.

2. Amperes of 201—400, $175.00.

3. Amperes of 401 or above will be priced as subsections (d)(3) and (4) of this section and does not have the three-inspection trip limitation.

b. *Existing one-family and two-family dwellings.* Maximum fees include up to three inspection trips per dwelling. The fee for additions, alterations, or repairs to an existing dwelling is as follows:

1. Up to and including a 200 amp service is priced as subsections (d)(3) and (4) of this section but not to exceed $125.00.

2. With a 201 amp to 400 amp service is priced as subsections (d)(3) and (4) of this section but not to exceed $175.00.

3. With a 401 amp service or above is priced as subsections (d)(3) and (4) of this section and does not have the three inspection trip limitation.

These fees apply to each separate dwelling unit. The fee for additional inspections or other installations is that specified in subsections (d)(2) through (4) of this section. The installer may submit more then the minimum fee if it is know in advance there will be more inspection trips then covered by the required minimum fees.

c. *Multifamily dwelling.* The fee for each dwelling unit of a multifamily dwelling is $50.00. This fee includes only the inspection of the wiring within individual dwelling units and the final feeder to that unit. This limitation is subject to the following conditions:

1. The multifamily dwelling is provided with common service equipment and each dwelling unit is supplied by a separate feeder. The fee for multifamily dwelling services or other power source supplies and all other circuits is that specified in subsections (d)(3) and (4) of this section.

2. This limitation applies only to new installations for multifamily dwellings where the majority of the individual dwelling units are available for inspection during each inspection trip.

3. A separate electrical permit must be filed for each dwelling unit that is supplied with an individual set of service entrance conductors. These fees are the one-family dwelling rate specified in subsection (d)(5)a of this section.

(6) *Work without permit.* Whenever any work for which an electrical permit is required by the city has begun without the permit being filed with the city, a special investigation shall be made before an electrical permit form is accepted by the inspection department.

a. An investigation fee, in addition to the full fee required by subsections (d)(2) through (5) of this section, shall be paid before an inspection is made. The investigation fee is two times the permit fee. The payment of the investigation fee does not exempt any person from compliance with all other provisions of the city electrical ordinance or statutes nor from any penalty prescribed by law.

b. When reinspection is necessary to determine whether unsafe conditions have been corrected and the conditions are not the subject of a pending appeal a reinspection fee of $40.00 may be assessed in writing by the inspector.

c. When inspections scheduled by the installer are preempted, obstructed, prevented, or otherwise not able to be completed as scheduled due to circumstances beyond the control of the inspector, a supplemental inspection fee of $40.00 may be assessed in writing by the inspector.

(7) *Inspection of transitory projects.* For inspection of transitory projects

including, but not limited to, festivals, fairs, carnivals, circuses shows, production sites, and portable road construction plants. The inspection procedures and fees shall be as specified in subsections (d)(7)a through c of this section.

a. The fee for services, generators, and other sources of supply and all feeders, circuits and transformers is as specified in subsections (d)(3) and (4) of this section.

b. Amusement rides, devices, concessions, attractions, or other units must be inspected at their first appearance of the year. The inspection fee is $20.00 per unit with a supply of up to 60 amps and $30.00 per unit with a supply above 60 amps.

c. An owner, operator, or appointed representative of a transitory enterprise shall notify the AHJ of its itinerary and schedule an inspection at least 14 days prior to setup.

(8) *Commercial plan review fees.* An electrical plan review fee will be assessed on all commercial projects that involve the installation of a new or upgraded service, the installation of a new or relocated panel board (sub panel), or if a plan review is requested by the AHJ. Items needed for commercial electrical plan review:

a. Electrical plans and all related documents, three copies.

b. Electrical specifications manuals, three copies.

c. Any additional information requested by the AHJ.

(9) *Fees not already covered in this subsection.* The following are for fees for work not covered in this subsection:

a. The fee for alarm, communication, signaling circuits, of less than 50 volts is $0.50 for each device or apparatus.

b. The fee for inspections not covered in this fee schedule or for requested special inspections is $57.00 per hour.

(10) *National Electrical Code interpretation of provisions.* For purposes of interpretation of this subsection and Minnesota Rules ch. 3800, the most recently adopted edition of the National Electrical Code shall be prima facie evidence of the definitions, interpretations, and scope of words and terms used.

(e) *Permits for wells.* Permits for drilling or deepening wells are $65.00 per drilling or deepening.

(f) *Building relocation.* Moving permit fees as follows:

(1) If not on state or county highway, it requires conditional use permit at $350.00.

(2) On state or county highways, there is no fee, but requires evidence of insurance and refundable $250.00 of cash.

(g) *Land use administration fees.*

(1) Land use administration fees for the cost of staff reports, meetings, etc., are as follows:

Property file research administration fee for	$15.00

nonowners	
Zoning letter	$25.00
Building permit deposit (to cover staff review time/nonpickup)	
Minor projects (value less than $1,000.00)	$100.00
Major projects (value more than $1,000.00)	$500.00
Land use application fee (city staff)	
1 to 3 hours	No charge
More than 3 hours	$75.00 per hour
Unauthorized construction/no permit issued	Double building permit fee

(2) Land use application outstanding balances. Any and/or all land use application outstanding balances from:

a. An applicant must be paid before a new land application from that applicant will be accepted and deemed to be complete.

b. A previous applicant seeking the same type of approvals involving the same parcel must be paid before the new application will be accepted and deemed complete.

(h) *Subdivision and zoning fees.*

Section	*Description*	*Fee*
105-22	New construction monitoring escrow	$5,000.00
105-22	Temporary certificate of occupancy escrow	5,000.00
121-33	Waiver of platting fee	200.00
	Waiver of platting escrow	750.00
121-33	Subdivision exemption application fee	200.00
121-33	Subdivision exemption escrow	750.00
129-203	Fence permit	55.00
129-32	Zoning appeals/adjustment application	200.00
129-32	Zoning appeals/adjustment escrow	750.00
129-39	Zoning variance	200.00
	Variance escrow	750.00
129-38	Conditional use permit	350.00
	CUP escrow	750.00
129-40	Expansion permit	200.00
	Expansion permit escrow	750.00
129-70	Vacation	350.00
	Vacation escrow	1,000.00

Section	*Description*	*Fee*
105-261	Stormwater permit	300.00
	Stormwater escrow	750.00
129-353	Wetlands permit	350.00
129-33	Zoning amendment	350.00
	Rezoning escrow	750.00
	Planned unit development	1,700.00
	Site plan review	200.00
	Commercial site plan review escrow	750.00
	Preliminary plat	350.00, plus 15.00 per lot
	Final plat	350.00, plus 15.00 per lot
	Minor subdivision	
	Lot split	250.00
	Per lot over two lots	15.00
	Park dedication fee (minor)	1,100.00 per lot
	Park dedication fee (major)	1,100.00 per lot or 10% of market value (whichever greater)
	Escrow deposit (minor)	1,000.00
	Escrow deposit (major)	5,000.00
129-287	Adult establishment license fee	2,000.00
	Police Department background check	65.00 per hour
119-2	Sign permit	100.00
	Sign alteration fee (structural alteration, up to the first $1,000.00)	50.00
105-261	Erosion control const. escrow deposit	1,000.00
105-261	Erosion control site inspection fee	70.00 (per inspection)
	Temporary sign permit	25.00
54-107	Containers in right-of-way	50.00
117-45	Portable storage container	50.00
129-194	Membrane structure	50.00

(Code 1987, § 380; Ord. No. 13-2003, 12-7-2003; Ord. No. 04-2004, 7-4-2004; Ord. No. 11-2004, 10-31-2004; Ord. No. 12-2004, 12-26-2004; Ord. No. 18-2005, 12-25-2005; Ord. 04-2006, 2-26-2006; Ord. No. 21-2006, 11-12-2006; Ord. No. 24-2006, 12-24-2006; Ord. No. 01-2007, 1-21-2007; Ord. No. 15-2007, 12-11-2007; Ord. No. 01-2008, 1-22-2008; Ord. No. 07-2010, 10-31-2010; Ord. No. 10-2012, 1-1-13)

Chapter 105

BUILDINGS AND BUILDING REGULATIONS*

***State law reference—**Authority to regulate construction of buildings, Minn. Stats. § 412.221, subd. 28; state building code, Minn. Stats. § 16B.59 et seq.

ARTICLE I. IN GENERAL

Sec. 105-1. Building official.

(a) *Office established.* The office of building official is hereby established.

(b) *Authority and duties.* The building official is hereby vested with such authority as may here and elsewhere be conferred upon such office. It shall be the duty of the building official to see that article II of this chapter is enforced through proper legal channels. The building official shall perform all of the statutory duties of a building official as those duties are set forth in Minn. Stats. ch. 16B. The building official shall attend to all aspects of administration of the city's building code, including the issuance of all building permits, the inspection of all manufactured home installations, and such other duties as may be prescribed by the state commission of administration.

(c) *Code compliance.* The building official shall enforce article II of this chapter and all statutes, codes and ordinances relating to building and zoning, and may achieve enforcement through the issuance of notices, warning tickets, or citations in lieu of arrest or detention.

(Code 1987, § 210; Ord. No. 7, 8-17-1987)

Secs. 105-2—105-20. Reserved.

ARTICLE II. STATE BUILDING CODE*

***State law reference—**Building Code, Minn. Stats. § 16B.59 et seq.

Sec. 105-21. Adopted by reference.

(a) *Administration.* The application, administration, and enforcement of this article shall be in accordance with Minn. Rules ch. 1300. This article shall be enforced by a state certified building official who is designated by the city to administer this article.

(b) *Permits and fees.* The issuance of permits and the collection of fees shall be as authorized in Minn. Stats. § 16B.62, subd. 1. Permit fees shall be assessed for work governed by this article in accordance with the ordinance adopted by the city. In addition, a surcharge fee shall be collected on all permits issued for work governed by this article in accordance with Minn. Stats. § 16B.70. An investigation fee, in addition to the permit fee, shall be collected whenever any work for which a permit is required by this article has been commenced without first obtaining said permit. The investigation fee shall be equal to the amount of the permit fee required by this article. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this article nor from any penalty prescribed by law. A reinspection fee may be assessed for each reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. Reinspection fees may be assessed when the inspection record card is not readily available, approved plans are not readily available, failure to provide access on the date for which inspection is requested or for deviating from plans requiring the approval of the building official. Fee refunds may be authorized by the building official or City Manager (or designated representative) of any fee paid hereunder which was erroneously paid or collected. The building official or City Manager (or designated representative) may authorize the refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this article. The building official or City Manager (or designated representative)

shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment. All plan review fees shall be paid by the applicant whether the project is to be completed or not. If a building permit is expired and needs to be renewed, an applicant must pay a fee equal to one-half of the amount required for a new permit for such work, provided that no changes have been made or will be made in the original plans and specifications for such work.

(c) *State building code adopted by reference.* The Minnesota State Building Code, pursuant to Minn. Stats. §§ 16B.59—16B.75, includes all of the referenced amendments, rules and regulations, as such may be amended from time to time, is hereby adopted by reference. The Minnesota State Building Code is hereby incorporated in this section as if fully set out herein.

(Code 1987, § 300.02)

State law reference—Building official, Minn. Stats. § 16B.65.

Sec. 105-22. Building permits; application.

(a) *Plans and specifications.* No building permit application shall be approved unless all property taxes, special assessments, municipal utility fees, including but, not limited to, water and sewer bills, and penalties and interest thereon, have been paid for the property for which the building permit application has been submitted. No building permit application shall be approved unless by such building plans and specifications as the building official may determine to be sufficient to explain the nature, construction, and purpose of the building or structure, or additions or alterations, proposed to be erected or placed; or as the city may require.

(b) *Plat plan.* Each application for a building permit shall also be accompanied by two copies of a certificate of survey of the property or an accurate, scaled drawing of the property including the following:

(1) Lot dimensions.

(2) Location and size of existing and proposed buildings.

(3) Distance of structures from property lines.

(4) Location of bluffs and shorelines (when applicable).

The city reserves the right to require a certificate of survey for any project which shall be prepared by a licensed surveyor and shall include all information as referenced on the city survey requirements handout as well as any additional information deemed necessary by city staff.

(c) *Minimum floor area; residential properties.* Minimum floor area requirements for residential and commercial properties shall be a set forth in chapter 129, pertaining to zoning.

(d) *Plat plan to show location of garage.* Every application for a building permit in the residential or multiple dwelling district shall show on the accompanying plat or survey the location of any existing garage or the location of the garage proposed to be constructed by the subject application. If no garage exists and no garage is proposed in the subject application, or if the existing garage is proposed to be removed or demolished and is not to be replaced in the subject application, then the plat plan shall show the location reserved for the construction of any future garage for which subsequent application for a building permit may be made. When locating the future garage site on the plat plan, the city and the applicant shall ascertain that the site is accessible to a public street or alley and shall make provisions so that the future garage will comply with the dimensional requirements of chapter 129, pertaining to zoning.

(e) *Construction completion.*

(1) All exterior construction and site grading must be completed in a manner to avoid a public nuisance a defined in section 42-4.

(2) Construction and grading that has become a public nuisance is subject to abatement under section 42-6.

(3) All construction activity working hours shall be subject to section 46-141.

(f) *Commercial plumbing permits.* Prior to installation of a system of plumbing other than for single-family dwellings with independent plumbing service, complete plumbing plans and specifications, together with any additional information that the building official may require, shall be submitted in triplicate and approved by the building official. No construction shall proceed except in accordance with the approved plans. Any alteration or extension of any existing plumbing system shall be subject to these same requirements.

(g) *Electrical permits.*

(1) *Local electrical inspection program.* In accordance with Minn. Stats. § 326.244, subd. 4, the city hereby establishes a municipal electrical inspection program and transfers electrical permitting authority from the state to the city.

(2) *Permit requirements and process.* In accordance with Minnesota State Building Code ch. 1315, a completed electrical permit application and electrical plans and specifications, together with any additional information that the building official may require, shall be submitted in triplicate and approved by the building official prior to installation of electrical systems for commercial projects. No construction shall proceed except in accordance with the approved plans. Any alteration or extension of any existing electrical system, when required by the building code, shall be subject to these same requirements.

(3) *Fees.* Fees for electrical permits in the city shall be as established in section 105-3.

(Code 1987, § 300.10; Ord. No. 105-2000, 2-5-2000; Ord. No. 13-2005, 8-21-2005; Ord. No. 03-2006, 2-26-2006; Ord. No. 18-2006, 10-8-2006; Ord. No. 20-2006, 11-12-2006)

State law reference—Permits and permit fees, Minn. Stats. §§ 16B.665, 16B.70, 16B.71.

Sec. 105-23. Permit required—Plumbing.

No person shall install or make substantial repairs or additions to plumbing, sewage disposal, or sewage connection systems regulated by the Minnesota State Plumbing Code without first securing a permit for such installation, repair or addition. The permit applicant shall provide a written statement, signed by the applicant, that all property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted. There shall be a minimum fee as established by the city, for the permit for inside plumbing, plus an additional fee for each plumbing fixture; and there shall be a fee as established by the city, for each permit or connection to the public sanitary sewer system.

(Code 1987, § 310.01; Ord. No. 105-2000, 2-5-2000; Ord. No. 01-2001, 2-25-2001)

Sec. 105-24. Same—Mechanical systems.

It is unlawful for any person to perform any work on mechanical systems, including gas piping, of a building regulated by this article without first having obtained a permit and paid the fees as established by the city. The permit applicant shall provide a written statement, signed by the applicant, that all property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted. The provisions this article shall apply to the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of any heating, ventilating, cooling, refrigeration systems, incinerators or other miscellaneous heat-producing appliances within this jurisdiction.

(Code 1987, § 311.00; Ord. No. 25-1989, 5-8-1989; Ord. No. 105-2000, 2-5-2000; Ord. No. 01-2001, 2-25-2001)

Secs. 105-25—105-51. Reserved.

ARTICLE III. CONTRACTORS

DIVISION 1. GENERALLY

Secs. 105-52—105-75. Reserved.

DIVISION 2. MECHANICAL CONTRACTORS

Sec. 105-76. License, registration, fee and bond.

Each person doing mechanical or gas piping installation, repair, or connection for hire within the city, shall first register with the city and shall pay the following registration fee and shall file with the City Clerk the following bond, insurance, and other requirements:

(1) *Registration fee.* The annual fee for such registration shall be as established by the city and each registration shall terminate on January 1, next after issuance. Registration shall not be transferable. Where the term of the registration is less than a year, the fee shall be prorated with a minimum as established by the city.

(2) *Bond.* The applicant for a permit shall provide certification that a bond, as required by Minn. Stats. § 326.40, subd. 2, is in force and on file with the state department of labor and industry.

(3) *Certificate of insurance.* The applicant for registration shall also file a certificate of insurance or copies of public liability and property damage insurance policies containing a provision that they shall not be cancelled without ten days' written notice to the City Clerk, showing coverage of not less than $1,000,000.00 for each occurrence and $2,000,000.00 as an annual aggregate.

(4) *Status of employees of license holder.* No such registrant shall permit any person other than its bona fide employees to perform such work under such registration.

(5) *Expiration of registration.* Each such registration as provided hereunder shall expire annually on December 31.

(Code 1987, § 311.05; Ord. No. 25-1989, 5-8-1989; Ord. No. 01-2001, 2-25-2001)

State law reference—State performance bond for mechanical contractors, Minn. Stats. § 326.992.

Sec. 105-77. Revocation.

Any registration or permit granted under this article may be revoked for cause by the City Council.

(Code 1987, § 311.10)

Sec. 105-78. Responsible person.

The building contractor or owner shall notify the building department of the name and address of the mechanical contractor doing work for each residence and such contractor shall be held responsible for observance of this Code. In cases where the building contractor or owner fails to supply the building department with the names and addresses of those doing the mechanical work, the building contractor and/or owner shall be responsible for the proper installation of such work.

(Code 1987, § 311.15)

Secs. 105-79—105-99. Reserved.

DIVISION 3. PLUMBERS*

***State law reference—**Plumbers, Minn. Stats. § 326.37 et seq.

Sec. 105-100. State license required; registration with city; bond.

Each person other than owner/occupant of a single-family residence doing plumbing or sewage installation, repair, or connection for hire within this city, shall have a current license as master plumber from the state, and shall first apply to the city for the registration with the city for such license, and shall file with the City Clerk the following bond, insurance, and other requirements:

(1) *Bond.* The applicant for a permit shall provide certification that a bond, as required by Minn. Stats. § 326.40, subd. 2, is in force and on file with the state department of labor and industry.

(2) *Insurance.* The applicant for a permit shall provide certification that liability insurance, as required by Minn. Stats. § 326.40, subd. 2, is in force and on file with the state department of labor and industry.

(3) *Registration with city required.* No person shall do any plumbing or sewage installation, repair, or connection work for hire within the city without having first secured the registration of said license and having posted a bond and a certificate of insurance as required herein.

(4) *Status of employees of license holder.* No such registrant shall permit any person other than its bona fide employees to perform such work under such license and registration.

(5) *Expiration of registration.* Each such registration as provided hereunder shall expire annually on December 31.

(Code 1987, § 310.05; Ord. No. 01-2001, 2-25-2001)

Sec. 105-101. Responsible person.

The building contractor or owner shall notify the building department of the name and address of the plumber doing the plumbing work and/or sewage disposal work for each residence and such plumber shall be held responsible for observance of this Code. In cases where the building contractor or owner fails to supply the building department with the names and addresses of those doing the plumbing and/or sewage disposal work, the building contractor and/or owner shall be responsible for the proper installation of such work.

(Code 1987, § 310.10)

Secs. 105-102—105-130. Reserved.

ARTICLE IV. INTERNATIONAL PROPERTY MAINTENANCE CODE

Sec. 105-131. Purpose.

That a certain document, one copy of which is on file in the office of the City Clerk, being marked and designated as the 2000 edition of the International Property Maintenance Code, as published by the International Code Council, Inc., be and is hereby adopted as the property maintenance code of the city; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said property maintenance code are hereby referred to, adopted, and made a part hereof, as if fully set out in this article, with the additions, insertions, deletions and changes, if any, prescribed as follows:

(1) The following sections are hereby revised:

a. Section 101.1, insert: City of Mound.

b. Section 103.6, insert: Not applicable.

c. Section 303.14, insert: May 1 to September 1.

d. Section 602.3, insert: October 1 to May 1.

e. Section 602.4, insert: October 1 to May 1.

(2) The following sections of the International Property Maintenance Code are hereby deleted in their entirely:

a. Section 302.4, Weeds.

b. Section 302.8, Motor Vehicles.

(Code 1987, § 319.05)

State law reference—Adoption by reference, Minn. Stats. § 471.62.

Sec. 105-132. Removal of snow and ice.

The owner/occupant of any rental dwelling shall be responsible for the removal of snow and ice from parking lots and/or driveways, steps and walkways on the premises. Individual snowfalls of three inches or more or successive snowfalls accumulating to a depth of three inches shall be removed from walkways and steps within 48 hours after cessation of the snowfall.

(Code 1987, § 319.10)

Sec. 105-133. Egress requirements.

Every sleeping room below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

(1) All egress or rescue windows from sleeping rooms shall have a total glazed area of at least five square feet. The smallest net clear opening for each such window shall be 20 inches in width by 24 inches in height.

(2) Where windows are provided as a means of escape or rescue, they shall have a finished sill height not more than 48 inches above the floor.

(3) Any such window replaced or newly installed shall be done in accordance with article II of this chapter and in the codes adopted therein.

(Code 1987, § 319.15; Ord. No. 03-2003, 6-8-2003)

Secs. 105-134—105-164. Reserved.

ARTICLE V. BUILDING MOVING*

***State law reference—**Building movers, Minn. Stats. § 221.81.

DIVISION 1. GENERALLY

Sec. 105-165. Conformity of building or structure to building code required.

Whether or not a permit is required, no building or structure shall be moved to a location within this city unless it conforms to the building, plumbing, heating, electrical and other construction regulations of this city relating to new structures. In addition to conformity with the applicable codes, as minimum requirements, all plumbing for such building or structure shall be by a licensed master plumber, and residential buildings shall have a 100-ampere electrical service. If construction, alterations, or repair work on such building or structure will be necessary to make it conform to such regulations, permits for such work shall be obtained before such building or structure is moved, which permits shall make provision for the doing of such work within 90 days after such building or structure is located in this city. Failure to make such building or structure conform to such construction regulations within such 90-day period shall constitute a violation of this section, and each day that such violation is continued after such 90-day period shall constitute a separate offense. No such permit shall be granted except upon order of the City Council after favorable recommendation upon the application by the city Planning Commission. The City Council shall hold a public hearing together with advertised notice of hearing before granting or denying such permit. Notice of the public hearing shall be published in the official newspaper at least ten days prior to

the hearing. Notice of the hearing shall also be mailed to owners of property located within 350 feet of the outer boundaries of the land to which the building is proposed to be moved. The processing of the application shall be treated the same as an application for a conditional use permit under section 129-38 and shall pay the same fee as is required by the city to process a conditional use permit. No such building or structure shall be moved to a location within the city unless it will conform to the zoning regulations of the city, will conform to the front yard and other setbacks of lot requirements, and will be a building or structure of the same general character and appearance as other buildings or structures in the vicinity. The City Council shall determine whether or not such building or structure will be permitted at the proposed location.

(Code 1987, § 300.25, subd. 3; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Secs. 105-166—105-183. Reserved.

DIVISION 2. PERMIT

Sec. 105-184. Required.

It shall be unlawful for any person to move any building or structure into the city from any place outside the city, or wholly within the city from one lot or parcel to another, or from the city to a point outside the city without first making application to the building official and securing a permit therefor as hereinafter provided. Upon making application for a permit to move such building, there shall be paid a fee as established by the city for garages and small out buildings without living quarters and for all other buildings or structures. Said fee shall be refunded if the permit is refused.

(Code 1987, § 300.25, subd. 1; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Sec. 105-185. Exception to permit requirement.

No moving permit shall be required for the moving of any building or structure smaller than 120 square feet.

(Code 1987, § 300.25, subd. 2; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Sec. 105-186. Application; insurance; inspection; conditions; bond.

(a) In the application required by this section, the applicant shall furnish the building official with such information as he may require concerning the size, location, method of construction, type of building or structure, proposed location, the equipment proposed to be used in the moving, the proposed route, the proposed length of time that the building will be upon the city streets, the days and hours when such move is to be made, the financial responsibility of the applicant, and the insurance protection carried by the applicant.

(b) The application shall be accompanied by a proposed route and timetable of the move approved by the city Chief of Police, city engineer, and the gas, electric, and telephone utility companies as, at such time, are doing business within the city. The application shall also be accompanied by a copy of an insurance policy insuring against liability for personal injury or death occurring in the course of such move with limits of liability not less than $200,000.00 for each individual and $600,000.00 for each occurrence and against liability for property damage with limits of liability not less than $50,000.00 for each occurrence or such higher limits as are required by the city. The application shall be accompanied by a plat of the proposed location showing the proposed location with reference to the property lines and buildings in the vicinity.

(c) The applicant shall give access to said building or structure to the building official for the purpose of inspection and shall permit the building official to inspect the equipment to be used in such move.

(d) No such application for a moving permit shall be granted by the City Council without the filing of, and the order granting issuance of a moving permit shall be conditioned upon, the posting by applicant of a security bond, cash bond, or letter of assurance by the mortgage of an executed construction mortgage conditioned upon and guaranteeing that the structure will be installed and brought in conformity

to the building code within 90 days of the issuance of the permit. The penalty of the bond shall be an amount equal to 50 percent of the estimated cost of bringing the structure into conformity with all codes.

(e) No such application for a moving permit shall be granted by the City Council unless such building or structure can be moved with reasonable safety to persons or property within the city. The building official may impose such conditions as are necessary to ensure compliance with the ordinances of this city and to ensure the public's safety.

(Code 1987, § 300.25, subd. 4)

Sec. 105-187. Application, referral to Chief of Police.

After examination of said application, annexes, and all facts relative thereto, if the building official shall be satisfied that the ordinances of this city will not be violated by such moving and the public safety will not be jeopardized thereby, he shall refer the application to the Chief of Police of this city.

(Code 1987, § 300.25, subd. 5; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Sec. 105-188. Imposition of additional requirements by Chief of Police and city engineer.

The Chief of Police and the city engineer of this city shall examine such application and the facts relative thereto to determine the advisability of any proposed use of the city streets from the viewpoint of traffic and public safety on the days and hours when the proposed moving would be taking place. They may impose such conditions with respect to the days and hours of moving, or the route to be followed within the city and traffic or safety devices to be used as they shall determine to be necessary to ensure traffic and public safety.

(Code 1987, § 300.25, subd. 6; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Sec. 105-189. Bond.

Upon the approval of the application for such permit, but before the issuance thereof, the applicant shall post a cash bond with the city in the sum of $1,000.00 to indemnify the city for any damage to city streets caused by such travel thereon. Such bond shall be refundable immediately after completion of said move and inspection of the streets involved by the city superintendent of streets with report of no damage.

(Code 1987, § 300.25, subd. 7; Ord. No. 37-1989, 1-2-1990; Ord. No. 01-2001, 2-25-2001)

Secs. 105-190—105-216. Reserved.

ARTICLE VI. BUILDING NUMBERS

Sec. 105-217. Street numbering.

Effective February 1, 1966, the street numbering system as set forth in the street numbering map on file in the office of the village clerk made a part hereof as if fully set forth in this article be and hereby is adopted as the official street address numbers within the city.

(Code 1987, app. E, § 21.50)

Secs. 105-218—105-242. Reserved.

ARTICLE VII. HAZARDOUS OR SUBSTANDARD BUILDINGS

Sec. 105-243. Adoption of state provisions by reference.

The provisions of Minn. Stats. §§ 463.15—463.251 relating to the definition of terms, abatement, and recovery of city costs in connection with vacant buildings, hazardous buildings, and open excavations, are adopted and made a part of this article as if set out in full.

(Code 1987, § 1005.01)

Sec. 105-244. Securing vacant buildings.

The City Manager, or the City Manager's designee, for emergency purposes, may secure a vacant or unoccupied building that presents an immediate danger to the health and safety of persons in the

community as provided in Minn. Stats. § 463.251. The cost of securing the building may be charged against the real estate as provided in Minn. Stats. § 463.21.

(Ord. No. 05-2008, § 1005.04, 4-22-2008)

Secs. 105-245—105-260. Reserved.

ARTICLE VIII. GRADING, SOIL EROSION, AND SEDIMENTATION CONTROL

Sec. 105-261. Purpose; permits; procedures; exceptions.

(a) *Purpose.* The city requires the preparation and implementation of erosion control plans for land disturbing activities, in order to limit erosion from wind and water; reduce flow volumes and velocities of stormwater moving off-site; reduce sedimentation into water bodies; and protect soil stability during and after site disturbance. These measures should reflect the following principles:

(1) Minimize, in area and duration, exposed soil and unstable soil conditions.

(2) Minimize disturbance of natural soil cover and vegetation.

(3) Protect receiving water bodies, wetlands and storm sewer inlets.

(4) Retain sediments from disturbed properties on site.

(5) Minimize off-site sediment transport on trucks and equipment.

(6) Minimize work in and adjacent to water bodies and wetlands.

(7) Maintain stable slopes.

(8) Avoid steep slopes and the need for high cuts and fills.

(9) Minimize disturbance to the surrounding soils, root systems and trunks of trees adjacent to site activity that are intended to be left standing.

(10) Minimize the compaction of site soils.

(b) *Permit requirement.* Unless specifically excepted by this section, land-disturbing activity shall require a permit incorporating an erosion control plan approved by the city and shall be conducted in accordance with that plan.

(c) *Exceptions.* The following land-disturbing activity shall not be subject to the requirements of this section:

(1) Activity that:

a. Disturbs an area of less than 5,000 square feet; and

b. Involves the grading, excavating, filling, or storing on site of less than 50 cubic yards of soil or earth material.

(2) Routine agricultural activity.

(3) Emergency activity immediately necessary to protect life or prevent substantial physical harm to person or property.

(4) Activity otherwise subject to this section, where the city has entered into a written agreement with an agency where the activity takes place providing that the city will not exercise erosion control permitting authority within the city under the circumstances in question.

(d) *Grading and erosion control plan.*

(1) A satisfactory erosion control and grading plan consistent with the city, the surface water management plan (app. J and other sections as applicable) and the Minnesota Pollution Control Agency's Best Management Practices Handbook, Protecting Water Quality in Urban Areas, as amended, must be approved by the city engineer before a building permit is issued for construction, if the

construction will result in disturbing the soil. To guarantee compliance with the plan, a cash escrow as established by the city, shall be furnished the city before a building permit is issued. The maximum escrow required of an individual builder or subdivider, regardless of the number of building permits that have been issued to the builder or subdivider, is $10,000.00. The city may use the escrow to reimburse the city for any labor or material costs it incurs in securing compliance with the plan or in implementing the plan. The city shall endeavor to give notice to the owner or developer before proceeding, but such notice shall not be required in an emergency as determined by the city.

(2) For subdivisions, the grading and erosion control plan must be consistent with the approved grading plan for the plat. Areas where the finished slope will be steeper than three units horizontal to one vertical shall be specifically noted. Also, location of erosion control devices shall be clearly labeled.

(3) Every effort shall be made to minimize disturbance of existing ground cover. No grading or filling shall be permitted within 40 feet of the ordinary high-water mark of a water body unless specifically approved by the city. To minimize the erosion potential of exposed areas, restoration of ground cover shall be provided within five days after completion of the grading operation. All grading must be completed in a manner to avoid a public nuisance as defined in section 42-4, pertaining to public nuisances affecting peace and safety. Construction and grading that has become a public nuisance is subject to abatement as contained in section 42-6, pertaining to abatement.

(4) Every effort shall be made during the building permit application process to determine the full extent of erosion control required. However, the city engineer may require additional controls to correct specific site related problems as normal inspections are performed.

(5) All erosion control noted on the approved plan shall be installed prior to the initiation of any site grading. Noncompliance with the grading and erosion control plan shall constitute grounds for an order from the city engineer to halt all construction.

(6) All construction activity that results in disturbance of the ground shall comply with the Minnesota Pollution Control Agency's Best Management Practices Handbook, Protecting Water Quality in Urban Areas, as amended.

(Code 1987, § 375.10; Ord. No. 07-2002, § 375.10, 7-7-2002; Ord. No. 12-2005, 8-7-2005; Ord. No. 05-2006, 2-26-2006)

Sec. 105-262. Requirement for stormwater management.

(a) *Purpose.*

(1) Require stormwater facilities to be included in land development projects where practicable and effective.

(2) Manage stormwater and snowmelt runoff on a regional or subwatershed basis throughout the city to:

a. Promote effective water quality treatment, where feasible, prior to discharge to surface water bodies and wetlands;

b. Limit developed peak rates of runoff into major surface water bodies to less than or equal to existing peak rates; and

c. Promote infiltration of both precipitation and runoff.

(b) *Applicability of permit requirements.* As provided herein, before creating any impervious surface or changing the contours of a parcel of land in a way that affects the direction, peak rate or water

quality of storm flows from the parcel, a developer of land for residential, commercial, industrial, institutional, or public roadway, sidewalk or trail uses shall submit a stormwater management plan and secure a permit. The plan shall incorporate provisions of the city's surface water management plan and the best management practices (BMPs) as found in the Minnesota Pollution Control Agency's Best Management Practices Handbook, Protecting Water Quality in Urban Areas, as amended, rate control and water quality control, as applicable. The applicability of the stormwater management requirements set forth in this section to a given development or redevelopment is set forth in subsections (b)(1) through (5) of this section.

(1) *Single-family homes.* A permit is not required for the construction or reconstruction of a single-family home or its residential appurtenances.

(2) *Single-family, developed or redeveloped subdivision.* A permit is not required from the city for construction on less than two acres with a density of two units or less per acre. A permit is required for residential development or redevelopment of subdivisions with a density of two units or less per acre on sites of two acres or more, as follows:

a. For development or redevelopment of subdivisions of two acres or more but less than eight acres, the best management practices provisions set forth in subsection (c) of this section are required.

b. For development or redevelopment of subdivisions of eight acres or more but less than 20 acres, the best management practices provisions set forth in subsection (c) of this section and the water quantity control provisions set forth in subsection (d) of this section are required.

c. For development or redevelopment of subdivisions of 20 acres or more, the best management practices provisions set forth in subsection (c) of this section, the water quantity control provisions set forth in subsection (d) of this section, and the water quality provisions set forth in subsection (d) of this section are required.

(3) *Medium density residential land development.* A permit is not required for the development or redevelopment on a site of less than two acres of residential subdivisions with single-family units at a density of more than two units per acre or a multiunit residential development or redevelopment, at a density of less than eight units per acre. A permit is required for development or redevelopment on a site of two acres or more of residential subdivisions with a density of more than two units per acre or multiunit residential development or redevelopment at a density of less then eight units per acre, as follows:

a. For development or redevelopment of two acres or more but less than five acres, the best management practices provisions set forth in subsection (c) of this section are required.

b. For development or redevelopment of five acres or more but less than eight acres, the best management practices provisions set forth in subsection (c) of this section and the water quantity control provisions set forth in subsection (d) of this section are required.

c. For development or redevelopment of eight acres or more, the best management practices provisions set forth in subsection (c) of this section, the water quantity control provisions set forth in subsection (d) of this section, and the water quality provisions set forth in subsection (d) of this section are required.

(4) Commercial, industrial, or institutional development or redevelopment; mixed use; high density residential development or redevelopment. A permit is required for commercial, industrial, institutional or mixed use development or

redevelopment, or for multiunit residential development or redevelopment at a density greater than or equal to eight units per acre, as follows:

a. For all development or redevelopment, the best management practices provisions set forth in subsection (c) of this section are required.

b. For development or redevelopment activities on sites of one-half acre or more but less than eight acres, the best management practices provisions set forth in subsection (c) of this section and the water quantity control provisions set forth in subsection (d) of this section are required.

c. For development or redevelopment activities on sites of eight acres or more, the best management practices provisions set forth in subsection (c) of this section, the water quality control provisions set forth in subsection (d) of this section, and the water quality provisions set forth in subsection (d) of this section are required.

(5) *Roads, streets, highways, sidewalks and trails.* A permit is not required for the maintenance or improvement of a public or private road, street, highway, sidewalk, trail or other linear way not otherwise regulated under subsections (b)(1) through (4) of this section, if the project does not result in a net increase in impervious surface. A permit is required for a public or private road, street, highway, sidewalk, trail or other linear way that results in a net increase in impervious surface area, as follows:

a. For projects that result in a net increase in impervious surface of less than one acre, the best management practices in subsection (c) of this section will be required;

b. For projects that result in a net increase in impervious surface of one acre or more, but the total project area is less than five acres, the best management practices provisions set forth in subsection (c) of this section and the water quantity control provisions set forth in subsection (d) of this section are required to treat the increase;

c. For projects that result in a net increase in impervious surface of one acre or more and the total project area is five acres or more, the best management practices provisions set forth in subsection (c) of this section, the water quantity control provisions set forth in subsection (d) of this section, and the water quality provisions set forth in subsection (d) of this section are required to treat the increase;

d. Sidewalks and trails that do not exceed ten feet in width and are bordered by a pervious buffer of at least five feet on each side do not require a permit and are not included in any calculation of net increase in impervious surface when part of a road or street project. The interruption of pervious buffer by streets, driveways or other impervious surfaces crossing a sidewalk or trail does not invalidate this exception provided that these impervious surfaces do not exceed 25 percent of the area of the required pervious buffer.

(6) *Surety.* A performance bond or other surety in a form satisfactory to the city is required for all activity, including clearing, grading, and excavation, that results in the disturbance of five or more acres of land.

(7) *Common scheme of development.* In determining stormwater management requirements under this section, development or redevelopment on adjacent sites under common or related ownership shall be considered in the aggregate. The requirements applicable to a development or redevelopment under this section shall be determined with respect to all development that has occurred on the site,

or on adjacent sites under common or related ownership, since the date of the ordinance from which this article took effect.

(8) *Additional development or redevelopment on developed sites.* When the impervious area on a site is increased by 50 percent or more, the requirements imposed by this article will be determined with respect to the site in a predevelopment condition. When the impervious area on a site is increased by less than 50 percent, the requirements imposed by this article will be determined with respect to only the additional impervious surface and site alteration proposed.

(c) *Best management practice requirements.* BMPs consist of site design, structural and nonstructural practices. BMPs must be incorporated in all projects requiring a permit under this section to limit creation of impervious surface, maintain or enhance on-site infiltration and peak flow control and limit pollutant generation on and discharge from the site. BMPs must be consistent with specifications of the MPCA manual Protecting Water Quality in Urban Areas (revised July 1991) and its future revisions. The city, in its discretion, may allow a BMP not addressed in the MPCA manual on a demonstration of its effectiveness or if its application will generate new and useful data or information regarding its effectiveness. All applications for which compliance only with BMPs is required shall delineate buildings and structures showing that door and window openings are a minimum of two feet above the 100-year high-water elevation.

(d) *Incorporation of surface water management plan.* Stormwater management and erosion control plan standards stormwater management plans shall incorporate provisions of the city's surface water management plan (app. J and other sections as applicable) and the Minnesota Pollution Control Agency's Best Management Practices Handbook, Protecting Water Quality in Urban Areas, as amended.

(Code 1987, § 375.20; Ord. No. 07-2002, § 375.20, 7-7-2002)

Chapter 109

ENVIRONMENTAL AND NATURAL RESOURCE PROTECTION

ARTICLE I. IN GENERAL

Secs. 109-1—109-18. Reserved.

ARTICLE II. PRIVATE WELLS AND SEWAGE DISPOSAL SYSTEMS*

***State law reference—**Local regulation of wells, Minn. Stats. § 103I.111; individual sewage treatment systems, Minn. Stats. § 115.55.

Sec. 109-19. Enforcement.

In addition to the criminal penalties for violation of this article, any dwelling served by a well or individual sewage system not in conformity with this article shall be considered to be a dangerous building under state statutes and shall be dealt with accordingly. No building not served by a municipal sewer and/or water system shall be occupied shall any certificate of occupancy be issued by the building official unless the provisions of this article shall have been complied with.

(Code 1987, § 305.15)

Sec. 109-20. Administration.

This article shall be administered by the city's health authority and the city's building official.

(Code 1987, § 305.20)

Sec. 109-21. Permits.

No person shall repair, install, construct, or modify any well or individual septic system unless said person shall have first obtained a permit from the City Clerk or someone he designates to process permits. The permit applicant shall provide written statement, signed by the applicant, that all property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted. The fee for such permit shall be as established by the city. It is the responsibility of the permittee to obtain the necessary inspections before doing the work.

(Code 1987, § 305.01; Ord. No. 105-2000, 2-5-2000; Ord. No. 01-2001, 2-25-2001)

Sec. 109-22. Adoption of state regulations.

(a) All water wells shall be constructed in accordance with all state requirements. Any reference in any such requirements to the term "commissioner" shall be a reference to the health authority.

(b) Existing, noncomplying wells may be utilized when:

(1) The well water is of satisfactory sanitary quality.

(2) Well serves an owner-occupied residence, with the exception that the well must be brought into compliance when the residence is sold.

(Code 1987, § 305.05)

Sec. 109-23. Individual sewage treatment standards adopted.

The provisions of Minn. Rules ch. 7080 are adopted. Whenever the term "agency" appears in same, it shall be deleted and the term "city" inserted. Whenever the term "executive director" or "director" appears in same, it shall be deleted and the term "health authority" inserted. The following standards will also apply; existing nonconforming systems may be utilized as long as:

(1) The system serves an existing, single-family dwelling that is owner occupied.

(2) The system may be required to be brought into conformity when the finished living space is increased or the house is sold.

(3) No nuisance, surface discharge, or groundwater contamination occurs as a result of the operation of the system.

(Code 1987, § 305.10)

Chapter 113
FLOODPLAIN MANAGEMENT

ARTICLE I. IN GENERAL

Sec. 113-1. Findings of Fact and Purpose.

(a) **Statutory Authorization:** The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of Mound, Minnesota, does ordain as follows.

(1) **Purpose:**

a. This Chapter regulates development in the flood hazard areas of the City of Mound. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this Chapter to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

b. National Flood Insurance Program Compliance. This Chapter is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

c. This Chapter is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-2. General Provisions.

(a) **How to Use This Chapter:** This Chapter adopts the floodplain maps applicable to the City of Mound and includes three floodplain areas: Floodway, Flood Fringe, and General Floodplain.

(1) Where Floodway and Flood Fringe are delineated on the floodplain maps, the standards in Sections 4 or 5 will apply, depending on the location of a property.

a. Locations where Floodway and Flood Fringe are not delineated on the floodplain maps are considered to fall within General Floodplain. Within General Floodplain, the Floodway standards in Section 4 apply unless the floodway boundary is determined, according to the process outlined in Section 6. Once the floodway boundary is determined, the Flood Fringe standards in Section 5 may apply outside the floodway.

(b) **Lands to Which Chapter Applies:** This Chapter applies to all lands within the jurisdiction of Mound shown on the Flood Insurance Rate Maps (FIRM) and the attachments

to the maps as being located within the boundaries of Floodway, Flood Fringe, or General Floodplain.

(c) **Incorporation of Maps by Reference:** The following maps together with all attached material are hereby adopted by reference and declared to be a part of this Chapter. The attached material includes the Flood Insurance Study for Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016, and the Flood Insurance Rate Map panels enumerated below, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the City Clerk's Office.

Effective Flood Insurance Rate Map panels:

27053C0283F
27053C0284F
27053C0287F
27053C0291F
27053C0292F

(d) **Interpretation:** The boundaries of Floodway, Flood Fringe, and General Floodplain are determined by scaling distances on the Flood Insurance Rate Map.

(1) Where a conflict exists between the floodplain limits illustrated on the Flood Insurance Rate Map and actual field conditions, the flood elevations shall be the governing factor. The City Manager or designee must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.

(e) **Abrogation and Greater Restrictions:** It is not intended by this Chapter to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this Chapter imposes greater restrictions, the provisions of this Chapter prevail. All other Chapters inconsistent with this Chapter are hereby repealed to the extent of the inconsistency only.

(f) **Warning and Disclaimer of Liability:** This Chapter does not imply that areas outside the floodplain or land uses permitted will be free from flooding or flood damages. This Chapter does not create liability on the part of the City of Mound or its officers or employees for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

(g) **Severability:** If any section, clause, provision, or portion of this Chapter is adjudged unconstitutional or invalid by a court of law, the remainder of this Chapter shall not be affected and shall remain in full force.

(h) **Definitions:** Unless specifically defined below, words or phrases used in this Chapter must be interpreted according to common usage and so as to give this Chapter its most reasonable application.

Accessory Use or Structure means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Base Flood Elevation means the elevation of the "regional flood." The term "base flood elevation" is used in the flood insurance survey.

Basement means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level, to include a walkout, at ground level.

Development means any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Equal Degree of Encroachment means a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Flood – a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Flood Frequency means the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood Fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Hennepin County, Minnesota.

Flood Prone Area means any land susceptible to being inundated by water from any source (see "Flood").

Flood Insurance Rate Map means the official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Floodplain means the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Floodproofing means a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway means the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement and crawl space).

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include the term "recreational vehicle."

New Construction means structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this Chapter.

One Hundred Year Floodplain means lands inundated by the "Regional Flood" (see definition).

Recreational Vehicle means a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be

self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Chapter, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle.”

Regional Flood means a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

Regulatory Flood Protection Elevation (RFPE) means an elevation not less than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway. The regulatory flood protection elevation (in feet) for the following lakes are:

(1) Lake Minnetonka – 933.0 feet
(2) Dutch Lake – 942.0 feet
(3) Lake Langdon – 937.0 feet

Special Flood Hazard Area means a term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”

Start of Construction includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, and other similar items.

Substantial Damage means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of

which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

a Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

b Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this Chapter, "historic structure" is as defined in 44 Code of Federal Regulations, Part 59.1.

(i) **Annexations:** The Flood Insurance Rate Map panels adopted by reference into Section 2.3 above may include floodplain areas that lie outside of the corporate boundaries of the City of Mound at the time of adoption of this Chapter. If any of these floodplain land areas are annexed into the City of Mound after the date of adoption of this Chapter, the newly annexed floodplain lands will be subject to the provisions of this Chapter immediately upon the date of annexation.

(j) **Detachments.** The Flood Insurance Rate Map panels adopted by reference into Section 2.3 above will include floodplain areas that lie inside the corporate boundaries of municipalities at the time of adoption of this Chapter. If any of these floodplain land areas are detached from a municipality and come under the jurisdiction of Mound after the date of adoption of this Chapter, the newly detached floodplain lands will be subject to the provisions of this Chapter immediately upon the date of detachment.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-3. Establishment of Floodway, Flood Fringe, and General Floodplain.

(a) **Areas:**

(1) Floodway. Floodway includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in Section 2.3, as well as portions of other lakes, wetlands, and basins within Zones AE (that do not have a floodway delineated) that are located at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

(2) Flood Fringe. Flood Fringe includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in Section 2.3, but are located outside of the floodway. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, Flood Fringe also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

(3) General Floodplain. General Floodplain includes those areas within Zones A as shown on the Flood Insurance Rate Map adopted in Section 2.3.

(b) **Applicability:** Within the floodplain established in this Chapter, the use, size, type and location of development must comply with the terms of this Chapter and other applicable regulations. In no cases shall floodplain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries

to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses Sections 4.0, 5.0 and 6.0 are prohibited. Floodproofing of structures in the Floodway, Flood Fringe and General Floodplain areas, as an alternative to elevating to the RFPE, is not allowed, except for utilities.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-4. Floodway.

(a) **Permitted Uses:** The following uses, subject to the standards set forth in Section 4.2, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

(1) Industrial-commercial loading areas and parking areas.

(2) Open space uses, including but not limited to, tennis courts, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, and single or multiple purpose recreational trails.

(3) Residential lawns, gardens, parking areas, and play areas.

(4) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

(b) **Standards for Floodway Permitted Uses:**

(1) The use must have a low flood damage potential.

(2) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

(3) Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-5. Flood Fringe.

(a) **Permitted Uses:** Permitted uses are those uses of land or structures allowed in the Flood Fringe that comply with the standards in Sections 5.2.

(b) **Standards for Flood Fringe Permitted Uses:**

(1) All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Activities such as the construction of structures and placement of fill within Flood Fringe shall result in a no net decrease in 100-year flood storage.

(2) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.

(3) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.

(4) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(5) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

(6) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(7) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a floodplain location.

(8) Manufactured homes and recreational vehicles must meet the standards of Section 9 of this Chapter.

(Ord. No. 13-2016, 10-23-2016)

Sec. 116-6. General Floodplain.

(a) **Permitted Uses:**

(1) The uses listed in Section 4.1 of this Chapter, Floodway Permitted Uses, are permitted uses.

(2) All other uses are subject to the floodway/flood fringe evaluation criteria specified in Section 6.2 below. Section 4.0 applies if the proposed use is determined to be in Floodway. Section 5.0 applies if the proposed use is determined to be in Flood Fringe.

(b) **Procedures for Floodway and Flood Fringe Determinations:**

(1) Upon receipt of an application for a permit or other approval within General Floodplain, the City Manager or designee must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.

(2) If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within Floodway or Flood Fringe. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in 6.23 below.

(3) The determination of floodway and flood fringe must include the following components, as applicable:

a Estimate the peak discharge of the regional (1% chance) flood.

b Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

c Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser

stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries.

(4) The City Manager or designee will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe. The assessment must include the cumulative effects of previous floodway encroachments. The City Manager or designee may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the City Manager or designee may approve or deny the application.

(5) Once the Floodway and Flood Fringe boundaries have been determined, the City Manager or designee must process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this Chapter.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-7. Land Development Standards.

(a) **Subdivisions:** No land may be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks are considered subdivisions under this Chapter.

(1) All lots within the floodplain must be able to contain a building site outside of the Floodway at or above the regulatory flood protection elevation.

(2) All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional (1% chance) flood has been approved by the City Council. The plan must be prepared by a registered engineer or other qualified individual, and must demonstrate that adequate time and personnel exist to carry out the evacuation.

(3) For all subdivisions in the floodplain, the Floodway and Flood Fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads must be clearly labeled on all required subdivision drawings and platting documents.

(4) In General Floodplain, applicants must provide the information required in Section 6.2 of this Chapter to determine the regional flood elevation, the Floodway and Flood Fringe boundaries and the regulatory flood protection elevation for the subdivision site.

(5) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:

a All such proposals are consistent with the need to minimize flood damage within the flood prone area,

b All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and

c Adequate drainage is provided to reduce exposure of flood hazard.

(b) **Building Sites:** If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

(1) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Constructed with materials and utility equipment resistant to flood damage;

(3) Constructed by methods and practices that minimize flood damage; and

(4) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-8. Public Utilities, Railroads, Roads and Bridges.

(a) **Public Utilities:** All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

(b) **Public Transportation Facilities:** Railroad tracks, roads, and bridges to be located within the floodplain must comply with Sections 4.0 and 5.0 of this Chapter. These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-9. Manufactured Home Parks.

(a) **Manufactured Homes Parks:** New manufactured home parks are prohibited in any floodplain.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-10. Administration.

(a) **City Manager:** The City Manager or designee designated by the City Council must administer and enforce this Chapter.

(b) **Permit Requirements:**

(1) Permit Required. A permit must be obtained from the City Manager or his designee prior to conducting the following activities:

a The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this Chapter.

b The use or change of use of a building, structure, or land.

c The construction of a fence.

d The change or extension of a nonconforming use.

e The repair of a structure that has been damaged by flood, fire, tornado, or any other source.

f The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.

g Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.

h Any other type of "development" as defined in this Chapter.

(2) Application for Permit. Permit applications must be submitted to the City Manager or designee on forms provided by the City Manager or designee. The permit application must include the following as applicable:

a A site plan showing all pertinent dimensions, existing or proposed buildings, structures, and significant natural features having an influence on the permit.

b Copies of any required municipal, county, state or federal permits or approvals.

c Other relevant information requested by the City Manager of designee as necessary to properly evaluate the permit application.

(3) Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished building elevations were accomplished in compliance with the provisions of this Chapter.

(4) Record of First Floor Elevation. The City Manager or designee must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain.

(5) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the City Manager or designee must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

(c) **Variances:**

(1) Variance Applications. An application for a variance to the provisions of this Chapter will be processed and reviewed in accordance with applicable state statutes and Section(s) 129-139 of the zoning code.

(2) Adherence to State Floodplain Management Standards. A variance must not allow a use that is not allowed in Floodway, Flood Fringe or General Floodplain, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.

(3) Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

a Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

b Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Chapters.

c Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Flood Insurance Notice. The City Manager or designee must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and 2) Such construction below the base or regional flood level increases risks to life and property. Such notification must be maintained with a record of all variance actions.

(5) Submittal of Meeting Notices to the Department of Natural Resources (DNR). The City Manager or designee must submit meeting notices for proposed variances to the DNR sufficiently in advance to provide at least ten days' notice of the meeting. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(7) Submittal of Final Decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(8) Record-Keeping. The City Manager or designee must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-11. Nonconformities.

(a) **Continuance of Nonconformities:** A use, structure, or occupancy of land which was lawful before the passage or amendment of this Chapter but which is not in conformity with the provisions of this Chapter may be continued subject to the following conditions. Historic structures, as defined in Section 2.835(b) of this Chapter, are subject to the provisions of Sections 11.11 – 11.16 of this Chapter.

(1) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as provided in 11.12 below. Expansion or enlargement of uses, structures or occupancies within the Floodway is prohibited.

(2) Any addition or structural alteration to a nonconforming structure or nonconforming use that would result in increasing its flood damage potential must be protected to the regulatory flood protection elevation.

(3) If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this Chapter.

(4) If any nonconformity is substantially damaged, as defined in Section 2.835 of this Chapter, it may not be reconstructed except in conformity with the provisions of this Chapter. The applicable provisions for establishing new uses or new structures in Sections 4.0 or 5.0 will apply depending upon whether the use or structure is in the Floodway or Flood Fringe, respectively.

(5) Any substantial improvement, as defined in Section 2.835 of this Chapter, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of Section 4.0 or 5.0 of this Chapter for new structures, depending upon whether the structure is in Floodway or Flood Fringe.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-12. Penalties and Enforcement.

(a) **Violation Constitutes a Misdemeanor:** Violation of the provisions of this Chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitute a misdemeanor and will be punishable as defined by law.

(b) **Other Lawful Action:** Nothing in this Chapter restricts the City of Mound from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the City Manager or designee within the specified period of time, each additional day that lapses will constitute an additional violation of this Chapter and will be prosecuted accordingly.

(c) **Enforcement:** Violations of the provisions of this Chapter will be investigated and resolved in accordance with the provisions of Chapter 1 of the Mound City Code. In responding to a suspected Chapter violation, the City Manager of designee and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City of Mound must act in good faith to enforce these official controls and to correct Chapter violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

(Ord. No. 13-2016, 10-23-2016)

Sec. 113-13. Amendments.

(a) **Floodplain Designation – Restrictions on Removal:** The floodplain designation on the Flood Insurance Rate Map must not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources (DNR) if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.

(b) **Amendments Require DNR Approval:** All amendments to this Chapter must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner must approve the amendment prior to community approval.

(c) **Map Revisions Require Chapter Amendments:** The floodplain regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.3 of this Chapter.

(Ord. No. 13-2016, 10-23-2016)

Chapter 117

MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Secs. 117-1—117-18. Reserved.

ARTICLE II. PORTABLE STORAGE CONTAINERS

DIVISION 1. GENERALLY

Sec. 117-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Portable storage unit means any container designed for the temporary storage of personal property which is typically rented to owners or occupants of property for their storage use and which is delivered and/or removed by truck or trailer.

(Code 1987, § 493.05)

Sec. 117-20. Special provisions.

(a) Portable storage units may be located in all districts.

(b) There shall be no more than one portable storage unit per property which shall not exceed 160 square feet. Stacking of portable storage units on top of each other is not permissible.

(c) Portable storage units shall not be placed on public property or in a location which obstructs traffic visibility.

(d) Portable storage units shall be placed only in the driveway or on a hard surface and must be setback of minimum of ten feet from the front property line.

(e) Portable storage units shall not be placed on residential property for more than ten consecutive days unless it is being used in conjunction with a construction or remodeling project which has a valid building permit in which case it must be removed within 150 days unless an extension has been applied for 30 days prior to the expiration and is approved by the City Manager. The portable storage unit must be removed within ten days following the final inspection or issuance of the final certificate of occupancy.

(Code 1987, § 493.20)

Secs. 117-21—117-43. Reserved.

DIVISION 2. PERMIT

Sec. 117-44. Procedure.

No person shall place a portable storage unit on private property without first obtaining a permit from the planning and building inspections department. Each container placed in accordance with this article shall be issued a placard that must be prominently displayed indicating the date of placement and removal. Failure to obtain a permit or to post the placard shall be considered to be a violation of this Code and subject to the penalties defined therein.

(Code 1987, § 493.10)

Sec. 117-45. Fee.

The fee for the permit shall be as established by the city.

(Code 1987, § 493.15)

Chapter 119

SIGNS

Sec. 119-1. Purpose.

(a) The purpose of this chapter is to protect and promote the general health, safety, welfare, and order within the city through the establishment of a comprehensive and impartial series of standards, regulations, and procedures governing the erection, use and/or display of devices, signs, or symbols serving as visual communicative media.

(b) The provisions of this chapter are intended to encourage creativity, a reasonable degree of freedom of choice, an opportunity for effective communication, and a sense of concern for the visual amenities on the part of those designing, displaying, or otherwise utilizing needed communication media of the types regulated by this chapter; while at the same time ensuring that the public is not endangered, annoyed, or distracted by the unsafe, disorderly, indiscriminate, or unnecessary use of such communication facilities.

(Code 1987, § 365.01)

Sec. 119-2. Administration and enforcement.

(a) *Permit required.* Except as herein exempted, no person shall install, erect, relocate, modify, alter, change the color, or change the copy of any sign in the city without first obtaining a permit. If a sign authorized by permit has not been installed within 365 days from the date of issuance of the permit, said permit shall become void and no fee shall be refunded.

(b) *Application and fee.* Application for permits shall be made in writing upon printed forms furnished by the city. Each application for a permit shall set forth the correct PID number of the tract of land upon which the sign presently exists or is proposed to be located, the location of the sign on said tract of land, the manner of construction and materials used in the sign, a complete description and sketch of the sign and such information as the City Council deems necessary. Every applicant shall pay a fee for each sign regulated by this chapter before being granted a permit. Sign permit fees shall be as established by the city. A triple fee shall be charged if a sign is erected without first obtaining a permit for such sign. Temporary signs shall be exempt from fees and permits except as noted in section 119-4(i).

(c) *Annual inspection.* The building official may annually inspect all signs to see that every sign complies with the minimum standards set forth in this chapter. A written record of all such inspections shall be kept.

(d) *Exemptions.* No permit shall be required for the following signs; provided, however, that all signs herein exempted from the permit requirements shall conform with all other requirements of this chapter:

(1) Window signs placed within a building and not exceeding 50 percent of the window area.

(2) Address, name place and/or identification signs having an area of two square feet or less.

(3) Signs erected by a governmental unit.

(4) Signs as described in section 119-4(i).

(5) Signs which are entirely within a building and not visible from outside said building.

(6) Campaign signs.

(7) Off-street information signs.

(e) *Variations/modifications.* The City Council may grant a variation/modification from the requirements of this chapter as to specific signs where it is shown that by reason of topography or other

conditions that strict compliance with the requirements of this chapter would cause a hardship. A variation/modification may be granted only if the variation/modification does not adversely affect the spirit or intent of this chapter. Written application for a variation/modification shall be filed with the City Clerk and shall state fully all facts relied upon by the applicant. The application shall be supplemented with maps, plans, or other data which may aid in an analysis of the matter. The application shall be referred to the Planning Commission for its recommendation and report to the City Council.

(f) *Existing nonconforming signs.* Any sign existing at the time of adoption of this chapter which does not conform to the provisions hereof shall not be rebuilt, altered, or relocated without being brought into compliance with the requirements of this chapter. After a nonconforming sign has been removed, it shall not be replaced by another nonconforming sign. Whenever use of a nonconforming sign has been discontinued for a period of three months, such use shall not thereafter be resumed unless in conformance with the provisions of this chapter.

(g) *Existing illegal signs.* All illegal signs existing at the time of adoption of this chapter which do not conform to the provisions hereof shall be removed within three months of the adoption of this chapter and subsequent notification by the city.

(h) *Violations.* If the building official finds that any sign regulated by this chapter is prohibited as to size, location, content, type, number, height or method of construction, or is unsafe, insecure, or a menace to the public, or if any sign has been constructed or erected without a permit first being granted to the installer of said sign, or to the owner of the property upon which said sign has been erected, or is improperly maintained, or is in violation of any other provisions of this chapter, he shall give written notice of such violation to the owner or permittee thereof. If the permittee or owner fails to set forth in this chapter, following receipt of said notice:

(1) Such sign shall be deemed to be a nuisance and may be abated by the city by proceedings taken under Minn. Stats. ch. 429, and the cost of abatement, including administration expenses, may be levied as a special assessment against the property upon which the sign is located; and/or

(2) It is unlawful for any permittee or owner to violate the provisions of this chapter. No additional licenses shall be granted to anyone in violation of the terms of this chapter or to anyone responsible for the continuance of the violation, until such violation is either corrected or satisfactory arrangements, in the opinion of the building official, have been made towards the corrections of said violation. The official may also withhold building permits for any construction related to a sign maintained in violation of this chapter. Pursuant to Minn. Stats. § 160.27, the building official shall have the power to remove and destroy signs placed on street right-of-way with no such notice of violation required.

(Code 1987, § 365.05; Ord. No. 20-1988, 4-17-1989; Ord. No. 00-111, 1-21-2001; Ord. No. 01-2001, 2-25-2001; Ord. No. 09-2010, 10-31-2010)

Sec. 119-3. Rules of construction and definitions.

(a) The language set forth in the text of this chapter shall be interpreted in accordance with the following rules of construction:

(1) Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning shall be construed as set forth in such definition.

(2) All measured distances expressed in feet shall be to the nearest tenth of a foot. In the event of conflicting provisions, the more restrictive shall apply.

(b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Address, nameplate and/or identification signs means a sign for postal numbers, whether written or in numerical form and may bear the name of the occupant of the building.

Advertising sign means a sign selling or promoting a business, commodity, or service which is not located or performed on the premises on which the sign is located.

Alteration means any major structural change to a sign, not including routine maintenance or repainting in the same color scheme as appeared in the original permit.

Area identification sign means a single freestanding sign located on identified premises, said premises shall measure no less than two acres in area, which identifies a residential subdivision, condominium, multiple-residential complex, and industrial area, an office complex, two or more commercial businesses within one structure, or any combination of the above.

Banner and pennants means attention-getting devices which resemble flags, made of nonpermanent paper, cloth, or plastic-like material.

Building means any structure having a roof which may provide shelter or enclosure for persons, animals, chattel, or property of any kind.

Business means any occupation, employment, or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

Business sign means a sign which identifies a business, profession, commodity, or service sold or offered upon the premises where such a sign is located.

Campaign sign means a temporary sign posted by a bona fide candidate for political office or by a person or group promoting a political issue for a candidate.

Canopy or marquee sign means any sign which is affixed to a projection or extension of a building or structure erected in such a manner as to provide a shelter or cover over the approach to any entrance of a store, building, or place of assembly.

Changing sign means a sign which displays copy changes shown on the same lamp bank, such as an electronically or electrically controlled public service, time and temperature sign, message center, or readerboard.

District means a specific zoning district as defined in this chapter.

Facade means the portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves and the entire width of the building elevation.

Flashing sign means an illuminated sign on which such illumination is not kept constant in intensity or color at all times when such sign is in use.

Freestanding sign means a sign which is placed in the ground and not affixed to any part of any building.

Governmental unit means the city, county, and/or state.

Governmental unit sign means a sign which is erected by a governmental unit.

Illegal sign means any sign which existed prior to the adoption of the ordinance from which this chapter is derived which was installed without permit approval as governed by the ordinances in effect at the time of installation.

Illuminated sign means a sign which has an artificial light source directed upon it or one which has an interior light source.

Institutional sign means a sign or bulletin board which identifies the name and other characteristics of a public or private institution on the site where the sign is located.

Motion sign means any sign which revolves, rotates, has any moving parts, or gives the illusion of motion.

Nonconforming sign means a sign which lawfully existed prior to the adoption of the ordinance from which this chapter is derived, but does not conform to the newly enacted requirements of the ordinance from which this chapter is derived.

Off-street informational sign means a sign, not exceeding four square feet per sign face, located on private property within or adjacent to off-street parking areas that informs vehicular traffic of parking and access restrictions within the off-street parking area.

Portable sign means a sign so designated as to be movable from one location to another and is not permanently attached to the ground or any structure.

Projecting sign means a sign, any portion of which projects over public property.

Public way means any street, alley, sidewalk which is maintained or owned by the city, county, or state.

Quasi-public means any private function which has the characteristics of a function performed by any unit of government, including, but not limited to, schools, churches, recreation areas and institutions.

Real estate sign means a sign placed upon property advertising that particular property for sale, rent, or lease. Such signs must contain the phrase "for sale," "for rent" or "for lease."

Roof line means the uppermost line of the roof of a building or, in the case of an extended facade, the uppermost height of said facade.

Roof sign means any sign erected upon or projecting above the roof of a structure to which it is affixed. Mansard roof surfaces are considered as wall area and are subject to wall signage restrictions.

Sandwich board means a sign which is a self-supporting A-shaped or freestanding temporary signs with two visible sides that are situated adjacent to a business, typically on a sidewalk and contains commercial speech.

Sign means any letter, word, symbol, device, poster, picture, statuary, reading matter or representation in the nature of an advertisement, announcement, message or visual communication whether painted, posted, printed, affixed or constructed, which is displayed outdoors for informational or communicative purposes.

Sign area means the area within a single continuous perimeter enclosing the extreme limits of the actual sign surface but excluding any structural elements outside the limits of each sign and not forming an integral part of the sign. The stipulated maximum sign area for a sign refers to a single facing. Double faced signs shall have identical message components on each side; however, computation of maximum allowable area shall only consider one sign face.

Sign, maximum height of, means the vertical distance measured from the mean street grade to the top of such sign.

Structure means anything constructed, the use of which requires more or less permanent location on the ground, or attached to something having a permanent location on the ground.

Temporary sign means any sign erected for the duration of an event or for the time necessary to promote the sale of real estate, subject to all requirements and restrictions of this chapter.

Wall sign means a sign which is affixed to any wall of a building. Such signs shall not project outward more than 12 inches and shall not wholly or partially obstruct any wall opening.

Window sign means a sign painted on, placed in, or affixed to any window exclusive of merchandise on display. The term "window signs" shall also include all signs visible from the exterior of a building that are placed on the back of shelving units, walls, or similar structures located less than seven feet from the window surface.

(Code 1987, § 365.10; Ord. No. 11-000, 1-21-2001; Ord. No. 10-2007, 9-25-2007)

Sec. 119-4. General provisions applicable to all districts.

(a) No sign other than governmental unit signs shall be erected or placed upon any public way or upon public easements with the exception of garage sale and real estate directional signage as provided for in subsection (i) of this section, pertaining to temporary signs.

(b) Freestanding advertising signs are prohibited in all districts except as governed by

subsection (i) of this section.

(c) Motion signs or similar devices shall be prohibited in all districts.

(d) No illuminated sign which changes in either color or intensity of light shall be permitted except one giving time, date, temperature, weather or similar public service information. The city in granting permits for illuminated signs shall specify the hours during which same may be kept lighted when necessary to prevent the creation of a nuisance. All illuminated signs shall have a shielded light source and concealed wiring and conduit and shall not interfere with traffic signalization.

(e) Signs in the central business district shall not project over public property more than 18 inches.

(f) Business signs shall not be painted, attached or in any manner affixed to trees, rocks, or similar natural surfaces, nor shall signs of any type be painted directly on the roof or walls of a building.

(g) Signs which interfere with the ability of vehicle operators or pedestrians to see traffic signals or which impede the vision of traffic by vehicle operators or pedestrians are prohibited. Such signs shall also comply with section 129-322.

(h) Signs shall not obstruct any window, door, fire escape, or opening intended to provide ingress or egress to any structure or building or public way.

(i) Temporary signs.

(1) One temporary real estate sign may be placed in any district for the purpose of advertising the lease or sale of property upon which it is placed. Only one such sign shall be permitted per street and/or lake frontage. Such signs shall be exempt from permits and fees providing they meet the following requirements:

a. Such sign shall be removed seven days following lease or sale.

b. The maximum size of such signs for each district is as follows:

1. In R-1, and R-2 district the maximum size is five square feet.

2. In R-3, R-4 and PDA districts the maximum size is 18 square feet.

3. In B-1, B-2, B-3, and I-1 districts the maximum size is 32 square feet.

(2) Temporary real estate promotional signs may be erected for the purpose of selling or promoting a residential project of ten or more dwelling units or any nonresidential project. Such signs shall be exempt from permits and fees; provided that:

a. Such sign shall not exceed 32 square feet in area.

b. Maximum height of ten feet.

c. Maximum number of said temporary real estate advertising signs shall not exceed two in number.

d. Minimum distance between said advertising signs is 500 feet.

e. Such signs shall be removed when the project is 90 percent complete, sold, or leased.

f. Such signs shall be located no closer than 100 feet to a preexisting residential dwelling unit.

g. Written approval from the property owner shall be submitted at the time of City Council review.

(3) Temporary banners and pennants employed for grand openings for business establishments, special events or promotions and holidays are not exempt from

permits and fees and shall be removed within 30 days upon permit issuance unless an alternate schedule is approved by the City Council. Temporary banners and pennants are prohibited from being placed upon any decorative fencing unless the banner or pennant is used in conjunction with a government, a quasi-public function, or similar-related special event. Permits for banners or pennants can be issued no more than four times per calendar year.

(4) One temporary identification sign setting forth the name of the project, architect, engineers, contractors, planners and financing agencies may be installed at a construction site in any district. The sign area of said construction sign shall not exceed 32 square feet in area. Such signs shall be removed when the building is 75 percent occupied and shall be exempt from all permits and fees.

(5) Garage sale signs will be permitted in conjunction with the sale of household goods and materials from the private residences. Such signs shall be exempt from permits and fees but shall be subject to the following:

a. Signs shall not exceed four square feet in area.

b. The name and telephone number of the party responsible for the sale shall be clearly marked on the sign.

c. Directional off-premises garage sale signs can be placed on private property providing that the property owners consent is obtained prior to the placement of such signs.

d. The use of garage sale signs shall be limited to five occasions per calendar year, per residence.

e. Boutiques, craft sales, and other sales events of handcrafted merchandise shall be subject to all garage sale signage provisions.

f. Garage sale signs shall be limited to five days per occurrence.

g. Garage sale signs placed in the right-of-way (ROW) shall be placed a minimum of five feet from the street pavement or curb and shall not obstruct visibility at intersections.

h. May not be on the right-of-way of county and state roads.

i. Garage sale signs shall be removed immediately following the sale.

(6) Special event signs shall be permitted subject to the regulations as set forth in subsection (i)(5) of this section.

(7) Directional real estate signage shall be allowed subject to the following:

a. Sign shall not exceed four square feet in area.

b. The name and number of the party responsible shall be clearly marked on the sign.

c. Directional off-premises real estate signs can be placed on private property provided that the property owners' consent is obtained prior to the placement of such signs.

d. Directional off-premises real estate signs for the purpose of advertising open houses shall be allowed only on Tuesdays, Thursdays, Saturdays and Sundays.

e. Directional off-premises real estate signs or open house signs may not be on the right-of-way of county and state roads.

f. Directional off-premises real estate signs, not advertising open houses, can be located in the right-of-way (ROW) but shall be placed a minimum

of five feet from the street pavement or curb and shall not obstruct visibility at intersections. See subsection (i)(7)e of this section for approved locations. Directional off-premises real estate signs not advertising open houses are not subject to specific days.

(8) Seasonal signs. Seasonal signs of a temporary or portable nature may be used in the nonresidential districts to promote or advertise on-premises seasonal services or merchandise. Such signs shall be limited to a maximum of 32 square feet and shall not be left in place for more than a two-month period. Permits and fees shall be required for all seasonal signs, and permits may be issued no more than two times per calendar year per business.

(9) Sandwich board signs. Sandwich board signs in the downtown area are permitted subject to the following regulations:

a. The maximum area shall be 12 square feet per side of sign with the maximum height being four feet.

b. Only one sandwich board sign per business per street frontage shall be permitted. Signage shall be located directly in front of or adjacent to the building that contains the business that is being advertised. Placement on the sidewalk in front of the building or along the curb is permissible.

c. Sandwich board signs shall not be placed so as to cause the width of the sidewalk to be reduced below four feet in width, nor shall they be erected or maintained in a manner that prevents free ingress or egress from any door, window or fire escape, nor shall they be attached to any standpipe or fire escape.

d. A temporary sign permit is required prior to the installation of the sign. Only one temporary sign permit for a sandwich board sign is allowed per business and is not transferable. The permit would be valid for one calendar year beginning January 1, and ending December 31. If the sign is to be located within the right-of-way, business owners shall sign a disclaimer that indemnifies the city of any liability for use of said public right-of-way.

e. A sketch including dimensions, content and location of the sandwich board sign must be attached to the permit application. Changeable copy is permitted on sandwich board signs. The permit application must be approved and signed by the planning and building inspection department before the sandwich board sign may be displayed.

f. Each business owner is responsible for attaching a copy of the approved permit or permit number to the sandwich board.

g. Sandwich board signs shall not be illuminated; shall not contain moving parts; only be displayed during business operating hours, except those located on private property; be removed from public sidewalks if there is any snow accumulation, the sign may not be replaced until the snow is removed.

h. Sandwich board signs placed in violation of this section will result in immediate removal of the sign.

i. Sandwich board signs within the public right-of-way may be moved/removed by the city for municipal purposes (i.e., snow removal, traffic issues, maintenance, etc.).

(j) Except as may be specifically authorized by this subsection and subsection (i) of this section, portable signs are prohibited. A portable sign used for the purpose of directing the public may be

permitted under the following conditions:

(1) The sign is coincidental to, or used in conjunction with, a governmental unit or quasi-public function;

(2) The period of said sign use shall not exceed thirty consecutive days;

(3) The signs shall not be used more than four times during a calendar year;

(4) The signs shall be placed on the premises of the advertised event and/or on such other premises following approval of a temporary sign permit by the city. Administrative approval of a portable sign is permitted if the following conditions are met:

a. The applicant obtain permission from the City Manager for placement of the sign on public property.

b. Written permission from the property owner of record is provided if being located off-premises

c. The criteria referenced in subsections (j)(1), (2), and (3) of this section are met.

d. The proposed location of the sign is reviewed and deemed acceptable by city staff, which shall include the police, planning, and engineering departments, based on the following criteria:

1. The sign is not being placed in the road right-of-way;

2. The sign does not obstruct the sight triangle for pedestrian or vehicular traffic;

3. Placement of the sign does not create any potential traffic or other related hazard;

4. Such signs shall require the issuance of a permit but will be exempt from all fees; and

5. In the instance of a multiuse facility, only one seasonal sign may be placed on the premises at any one time.

(k) Projecting wall signs shall be permitted only in commercial districts provided the total sign area does not exceed ten square feet per building face. Such signs shall not project over public property more than 18 inches.

(l) One address, name place and/or identification sign, visible from the public way, shall be required per building in all districts. Such signs shall contain the street address in minimum four-inch numerals and shall be securely attached to the structure.

(m) Canopies and marquees shall be considered an integral part of the structure and shall not be considered as part of the wall area and shall not warrant additional sign area.

(n) Signs located on the interior of a building are exempt from the provisions of this chapter. However, such signs, not including changeable signs, shall not contain flashing lights that are visible from the exterior of the building.

(o) A comprehensive sign plan is required at the time of Planning Commission review of any proposed commercial or industrial development. Said plan shall indicate the location, size, height, color, lighting and orientation of all proposed signs and shall be submitted for approval pursuant to the regulations of the city.

(p) Signs shall not exceed two faces.

(q) Roof signs shall be prohibited in all districts except as noted in section 119-5(5) and (6).

(r) Campaign signs may be placed in any district, subject to the following restrictions:

(1) Pursuant to Minn. Stats. § 211B.045, all noncommercial signs of any size may be posted in any number from 46 days before the state primary in a state general election year until ten days following the state election.

(2) Campaign signs shall be exempt from fees.

(3) All campaign signs shall have the name and telephone number of the person responsible for posting the sign clearly marked either on the face or reverse side.

(4) Campaign signs shall be removed and/or replaced is they become torn, faded, or otherwise damaged.

(Code 1987, § 365.15; Ord. No. 43-1990, 7-20-1990; Ord No. 74-1995, 6-27-1995; Ord. No. 13-2002, 7-7-2002; Ord. No. 16-2002, 8-25-2002; Ord. No. 07-2007, 6-26-2007; Ord. No. 10-2007, 10-13-2007; Ord. No. 14-2007, 12-11-2007; Ord. No. 06-2012, 7-22-12; Ord. No. 08-2012, 9-9-12)

State law reference—Noncommercial signs, Minn. Stats. § 211B.045.

Sec. 119-5. District regulations.

In addition to those signs permitted in all districts, signs as herein designated shall be permitted in each specified district and shall conform as to size, location and character according to the following requirements:

(1) Single-family residential (R-1) district.

a. *Address, name place, and/or identification signs.* One sign not to exceed two square feet in area for each dwelling unit, indicating only name and address.

b. *Institutional, recreation or quasi-public signs.* One sign or bulletin board per street frontage for each permitted or conditional use in said R-1 district. Such sign shall not exceed 48 square feet in area, and sign shall not be placed closer than ten feet to any street right-of-way line, and shall not exceed ten feet in height.

c. *Area identification sign.* One sign not to exceed 24 square feet in area for each development district entrance provided, however, that said sign does not exceed six feet in height and be placed within ten feet of any right-of-way.

(2) *Single-family residential (R-1A) district.* Same regulations as outlined in subsection (1) of this section.

(3) *Two-family residential (R-2) district.* Same regulations as outlined in subsection (1) of this section.

(4) *Multifamily residential (R-3) district.*

a. *Name place signs.* One sign not to exceed two square feet in area for each Single-family detached dwelling or six square feet in area for each multiple-family building. Same name place sign shall indicate only name and address.

b. *Institutional, recreation and quasi-public sign.* One sign or bulletin board per street frontage for each permitted or conditional use in said district, provided said sign shall not exceed 48 square feet in area and shall not be placed closer than ten feet to any street right-of-way and shall not exceed ten feet in height.

c. *Area identification sign.* One sign not to exceed 24 square feet in area for each development district entrance provided said sign is not placed within ten feet of any street right-of-way and not in excess of ten feet in height.

(5) Central business (B-1) district.

a. *Wall signs.* Wall signs are permitted on each street frontage provided said sign does not exceed 15 percent of said wall up to the maximum or 175 square feet in area. Individual signs shall not exceed 100 square feet. Additionally, wall signs not exceeding ten percent of said wall up to a maximum of 48 square feet, whichever is smaller, are permitted on each building frontage abutting a public, surface parking lot accommodating 25 or more cars providing that all land abutting all sides of the parking lot is either public right-of-way or commercially zoned property.

b. *Freestanding sign.* One freestanding sign per street frontage provided, however, said sign does not exceed 48 square feet in area and 25 feet in height and is not placed closer than ten feet from any street right-of-way. The ten-foot setback may be increased at intersections or other areas where freestanding signs may obstruct vehicular site distances.

c. *Area identification signs.* One area identification sign is permitted per street frontage per commercial development provided, however, said sign does not exceed 48 square feet except as provided herein, and 15 feet in height, and is not placed within ten feet of any street right-of-way. Area identification signs for retail shopping centers containing at least 20,000 square feet of attached gross floor area shall be permitted to have one area identification sign per street frontage provided said sign does not exceed 120 square feet in area. Shopping center signs shall be subject to the same height and setback limitations of other B-1 area identification signs. Where area identification signs are used, no freestanding signs shall be permitted. In addition to area identification signs, one wall sign is permitted for each business use with at least 2,000 square feet of gross floor area. Such signs shall not exceed 48 square feet.

d. *Roof signs.* Roof signs shall be permitted if they are an integral part of the architecture of a building. Such signs shall not extend more than five feet above the roof line of the building or exceed 75 square feet in area. Roof signs shall be limited to one face, parallel to the front of the building.

e. *Changing signs.* Changing signs are permitted providing that they do not exceed 18 square feet in total area. If placed in a window, such signs shall not exceed 25 percent of the total wall window area.

f. *Comprehensive sign plan.* Comprehensive sign plan required as outlined in section 119-4(o).

g. *Motor fuel station or motor fuel station, convenience store.* Lettering of or sign labels which are an integral part of the design of a gasoline pump shall be permitted. Additionally, wall signs and freestanding signs are permitted subject to subsections (5)a and b of this section.

h. *Lake frontage wall signs.* Wall signs in accordance with the requirements outlined in subsections (5)a and b of this section are permitted on a lake frontage. Such signs shall be approved by conditional use permit.

(6) *General business (B-2) district.* Same regulations as outlined in subsection (5) of this section.

(7) Neighborhood business (B-3) district.

a. *Wall signs.* Wall signs are permitted on each street frontage provided said sign does not exceed ten percent of said wall up to 48 square feet in area, whichever is smaller.

b. *Area identification signs.* One area identification sign is permitted per street frontage, per commercial development provided, however, said sign does not exceed 32 square feet in area, and ten feet in height, and is not placed within ten feet of any street right-of-way. In addition, one wall sign per building is permitted not to exceed 24 square feet in area.

c. *Comprehensive sign plan.* Comprehensive sign plan required as outlined in section 119-4(o).

(8) *Light industrial (I-1) district.* Same regulations as outlined in subsection (6) of this section.

(9) *Planned development area (PDA).* Same regulations as outlined in subsection (4) of this section.

(10) *Special provisions of projects included in a redevelopment plan.* Same regulations as outlined in subsection (4) of this section, unless the City Council, by resolution, approves a specific sign program for a development project located within an area included in a redevelopment plan established in accordance with Minn. Stats. §§ 469.027 and 469.028. The sign program may include, but is not limited to, sales and marketing signs, leasing signs, rental signs, and developer/contractor/builder signs.

(Code 1987, § 365.20; Ord. No. 5, 8-10-1987; Ord. No 11-2006, 5-21-2006; Ord. No. 09-2013, 9-29-13)

Sec. 119-6. Construction standards and maintenance.

(a) Except as otherwise noted in this district, permanent signs shall be constructed of durable, weather resistant materials anchored in a secure fashion and designed to withstand a wind pressure of 40 pounds per square foot. The exposed backs of all signs and sign structure shall be painted a neutral color.

(b) Signs determined by the city building official to be in a state of disrepair shall be restored to good repair by the sign owner or property owner on which the sign is situated within 30 days after the mailing of written notice to repair from the building official. In the event a noncompliance with said notice, the city shall be authorized to remove said sign at the expense of the owner or property owner.

(Code 1987, § 365.25; Ord. No. 16-2002, 8-25-2002)

Chapter 121

SUBDIVISION REGULATIONS*

***State law reference**—subdivision regulations, Minn. Stats. § 462.358.

ARTICLE I. IN GENERAL

Sec. 121-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or where the term is defined elsewhere in this Code:

Block means a tract of land bounded by streets, or by a combination of streets and public parks, railroad rights-of-way, shoreline of waterways, or boundary lines of municipalities.

Boulevard means that portion of the street right-of-way between the curbline and the property line.

Butt lot means any lot or lots at the end of a block, located between two corner lots.

Dock parcel means a parcel or tract of land located on the shore of a lake which is combined with a nearby but noncontiguous residential parcel which shall be subject to review and approval by the city to ensure compliance with section 121-33(4).

Dock parcel subdivision means the process of:

(1) Creating the dock parcel, if necessary, by division of a larger parcel; and

(2) Combining the dock parcel with a noncontiguous residential parcel.

Final plat means the final map, drawing or chart on which the subdivider's plan of a subdivision is presented to the City Council for approval and which, if approved, will be submitted to the county recorder or registrar of titles.

Owner means any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity having proprietary interest in the land subdivided under the provisions of this chapter.

Pedestrian way or walkway means a public right-of-way across or within a block to provide access for pedestrians.

Preliminary plat means a tentative map, drawing or chart of a proposed subdivision meeting requirements herein enumerated.

Residential parcel means, in conjunction with dock parcels, the noncontiguous nearby residential parcel with which the dock parcel is combined.

Reverse frontage lot (double frontage lot) means a lot extending between two streets with vehicular access potentially limited to one street.

Streets and alleys means:

(1) *Alley* means a minor way providing secondary vehicular access to the side or rear of two or more properties abutting on a street.

(2) *Collector street* means a street which carries through traffic from subdivision streets to arterial streets. It includes the principal access streets to a residential development and streets for circulation within such a development.

(3) *Commercial/industrial street* means a street designed for the primary purpose of serving industrial or commercial property.

(4) *Cul-de-sac* means a short, minor street having only one outlet and a vehicular turnabout.

(5) *Frontage road* means a minor street which is somewhat parallel and adjacent to a minor arterial or higher functional classification road and which provides access to abutting properties and protection from through traffic.

(6) *Minor arterial and collector street* means a street designated on the comprehensive plan and used primarily by fast moving traffic at heavy volumes as traffic arteries for travel between and among neighborhoods and other large areas. These streets are so designated for the purpose of applying the subdivision design standards found in section 121-116.

(7) *Private street* means a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but is owned by one or more private parties.

(8) *Street* means a public way for vehicular traffic whether designated as a street, highway, thoroughfare, collector, collector parkway, minor collector and minor collector parkway, throughway, road, arterial, minor arterial, avenue, lane, place, or however otherwise designated. The width of a street is measured between right-of-way lines.

(9) *Subdivision street* means a street of limited continuity used primarily for access to the abutting properties and the local needs of the neighborhood.

Subdivider means any person commencing proceedings under the provisions of this chapter to effect a subdivision of land for himself or for others.

Subdivision means the separation of an area, parcel or tract of land into two or more parcels, tracts, lots or longterm leasehold interests where the creation of the leasehold interests necessitate the creation of streets, roads or alleys for the residential, commercial, industrial or other use or any combination thereof, except those separations:

(1) Where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;

(2) Creating cemetery lots;

(3) Resulting from court orders, or the adjustment of a lot line by the relocation of a common boundary.

(Code 1987, § 330.05; Ord 02-2003, 6-8-2003; Ord. 07-2004, 8-8-2004)

State law reference—Subdivision defined, Minn. Stats. § 462.352, subd. 12.

Sec. 121-2. Purpose.

(a) The process of dividing raw land into home sites, or separate parcels for other uses, is one of the most important factors in the orderly growth of any city. Few activities have a more lasting effect upon its appearance and environment. Once the land has been subdivided and the streets, homes and other structures have been constructed, the basic character of this permanent addition to the city has become firmly established. It is then virtually impossible to alter its basic character without substantial expense. In most subdivisions, roads and streets must be maintained and various public services must be provided. The welfare of the entire city is thereby affected in many important respects. It is, therefore, to the interest of the general public, the developer and the future owners that subdivisions be conceived, designed and developed in accordance with sound rules and proper standards.

(b) All subdivisions of land hereafter submitted for approval shall fully comply, in all respects, with the regulations set forth herein. It is the purpose of these regulations to:

(1) Encourage well planned, efficient and attractive subdivisions by establishing reasonable standards for design and construction;

(2) Provide for the public health, safety and general welfare of residents by requiring properly designed streets, park land and adequate sanitary sewer, storm sewer and water service;

(3) Place the cost of improvements against those benefiting financially from their construction; and

(4) Secure the rights of the public with respect to public lands and waters.

(c) The City Council deems these regulations to be necessary for the preservation of the health, safety and general welfare of this city. These regulations have been developed under the authority contained in Minn. Stats. § 462.358 and are supplemented by appropriate sections of Minn. Stats. ch. 505, as indicated.
(Code 1987, § 330.01)

Sec. 121-3. Variance.

(a) The City Council may grant a variance from the regulations contained in this chapter following a finding that all of the following conditions exist:

(1) There are special circumstances or conditions affecting said property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land.

(2) The special circumstances or conditions affecting said property were not created by the applicant.

(3) The granting of the variance will not be detrimental to the public welfare or injurious to other property in the vicinity in which said property is situated and will not have an adverse effect upon traffic or traffic safety.

(4) The granting of the variance would not be contrary to the intent of the applicable ordinance.

In making this finding, the Council shall consider the nature of the proposed use of the land and existing use of the land in the vicinity, the number of persons who reside or work in the area, and the probable effect of the proposed variance upon traffic conditions in the vicinity.

(b) In granting variances, as herein provided, the Council shall prescribe conditions that it deems desirable or necessary to protect the public interest. In making a determination, the Council shall find that:

(1) The proposed project will constitute a desirable and stable city development.

(2) The proposed project will be in harmony with adjacent areas.

(c) The application for any variance shall be made in writing and shall be submitted to the planning staff. Said application shall include the specific variances requested, the locations of those variances, and how they vary from the provisions of this chapter. The written application shall be submitted to the Planning Commission for their advice and recommendation and the Planning Commission shall report on the provisions set forth in this section.
(Code 1987, § 330.170)

Sec. 121-4. Conveyance by metes and bounds.

No conveyance of land in which the land conveyed is described by metes and bounds or by reference to a plat made after the effective date of the ordinance from which this chapter is derived which has not been approved as provided herein shall be made or recorded unless the parcel described in the conveyance:

(1) Was a separate parcel of record at the time of the effective date of the ordinance from which this chapter is derived;

(2) Was the subject of a written agreement to convey, entered into prior to such time and was recorded in the office of the county recorder or registrar of titles within one year thereafter;

(3) Was a separate parcel of not less than 2½ acres in area and 150 feet in width on January 1, 1966;

(4) Was a separate parcels of not less than five acres in area and 300 feet in width on July 1, 1980;

(5) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any of which is less than five acres in area or 300 feet in width; or

(6) Is a single parcel of residential or agricultural land or not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area and 500 feet in width.

In any case in which compliance with the restrictions in this section will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the City Council may waive such compliance by adoption of a resolution to the effect pursuant to section 121-5 and other provisions of these subdivision regulations. All requests for waivers shall require a public hearing and shall follow the same procedure as required in public hearings for plats.

(Code 1987, § 330.185)

Sec. 121-5. Registered land survey.

It is the intention of this chapter that all registered land surveys in the city shall be presented to the Planning Commission in the form of a preliminary plat and in accordance with the standards set forth in this chapter for preliminary plats, and that the Planning Commission shall first approve the arrangement, sizes, and relationships or proposed tracts and such registered land surveys and that tracts to be used as easements or roads shall be so dedicated. Unless such approvals in accordance with the standards set forth in this chapter have been obtained, building permits will be withheld for building on tracts which have been so subdivided by registered land surveys, and the City Council may refuse to take over tracts or streets, roads, or to improve, repair, or maintain any such tracts or areas unless so approved.

(Code 1987, § 330.180)

Sec. 121-6. Building permits.

No building permits will be issued by the city for the construction of any building or structure on any lot in the subdivision, as defined herein, which has been approved for platting until all requirements of this chapter have been fully complied with.

(Code 1987, § 330.190)

Sec. 121-7. Fees.

Applications for variances, subdivisions, or waivers from the subdivision regulations shall be accompanied by a fee as established by the City Council.

(Code 1987, § 330.175)

Secs. 121-8—121-32. Reserved.

ARTICLE II. PLATTING*

***State law reference—**Review procedures required, Minn. Stats. § 462.358, subd. 3b.

DIVISION 1. GENERALLY

Sec. 121-33. Procedural requirements.

Before dividing any tract of land into two or more lots or parcels, or adjusting any boundaries not covered by Minn. Stats. § 462.352, subd. 12, the procedures in this chapter shall be followed with the exception of those subdivisions as set forth below:

(1) *Minor boundary adjustments.* The relocation of a boundary line between two abutting, existing parcels of property; such relocation not causing the creation of a new parcel or parcels and such relocation not violating the zoning ordinance set out in Chapter 129 may be administratively approved by the city and shall be submitted in a form so as to allow for recording at the county. At the discretion of the city, a survey may be required. Should the city determine that the relocation of a property boundary may have an adverse effect on either property or may circumvent applicable zoning requirements, the city may require the boundary adjustment to be processed as a subdivision exemption with Council approval as provided for in subsection (3) or as a minor subdivision in accordance with the process as set forth in Sec. 121-61. Approval of a minor boundary adjustment shall not disqualify the involved parcels from "lot of record" status.

(2) *Waiver of platting.* Any parcel of land, either platted or unplatted, that has been combined for tax purposes or for other reasons, cannot be reseparated or divided without an approved subdivision or a waiver of the platting requirements of this Code. The city has many old subdivisions with small platted lots which standing alone do not meet current zoning requirements. Many of these lots have been combined for tax purposes and for various other reasons, i.e., to create a building site, to indicate a desire to combine to avoid or reduce special assessments for improvements, etc. A waiver of the platting requirement may be granted by the City Council after receipt of background information provided by city staff. A request for waiver of the platting requirements shall be signed by the property owner on forms prepared for and approved by the City Council, which shall include a provision to reimburse the city for all of its costs. This request or application for a waiver shall be referred to city staff for review. The review by staff shall be conducted to determine if the division or release of the tax combination and the creating of new property identification parcels for tax and building purposes is in compliance with this Code and all planning and zoning standards and objectives. The staff shall prepare written findings and recommendations for the Council's consideration. The waiver of platting and the release of the tax combination may be approved if it is determined to be in compliance with all city codes. The Council may impose conditions to the waiver and shall require the payment of any deferred or forgiven special assessments that have been avoided by a tax combination. The waiver may be granted without public hearings or without referral to the Planning Commission. Nothing herein shall preclude the staff or Council from referring the matter to the Planning Commission if it is determined that their advice will be helpful in determining if the request meets the city's planning and zoning objectives. Where the property does not or will not meet all zoning or platting requirements, this subsection (2) does not prohibit the Council from concurrently approving a variance application

and a waiver of platting application so long as the Planning Commission has reviewed the variance application prior to Council action on the waiver of platting application. Approval of a waiver of platting shall not disqualify the involved parcels from lot of record status.

(3) *Subdivision exemption.* If subsections (1) and (2) are inapplicable and the property owner's application seeks an administrative or technical adjustment, the request is not contrary to zoning and platting requirements, and the request does not seek to create a new parcel or a new or replacement structure; then the Council by resolution can approve the subdivision exemption application and waive the requirements of a minor subdivision at Section 121-34 et seq. The resolution may be recorded. The Council may, at its option, refer a subdivision exemption application to the Planning Commission for recommendation before Council action. Where the property does not or will not meet all zoning or platting requirements, this subsection (3) does not prohibit the Council from concurrently approving a variance application and a subdivision exemption application so long as the Planning Commission has reviewed the variance application prior to Council action on the subdivision exemption application. Approval of a subdivision exemption application shall not disqualify the involved parcels from lot of record status.

(4) *Dock parcel subdivision.* Dock parcel subdivision will be processed as a subdivision exemption under subsection (3) of this section, and shall be subject to the following additional provisions:

a. Published and mailed notice regarding the subdivision exemption request shall be mailed to all property owners within 350 feet of the proposed dock parcel, no less than ten days prior to review of the application by the City Council.

b. The approval of a dock parcel subdivision will include an approved site plan showing the nature and location of all structures and improvements that are being proposed to be constructed on the dock parcel. No accessory structures with the exception of those allowed in article VIII of chapter 129, pertaining to shoreland protection shall be allowed on the dock parcel. No structure or improvement other than those shown on the approved site plan may be constructed on the dock parcel unless the site plan is amended.

c. The dock parcel shall be located within 200 feet of the residential parcel at the closest point.

d. The dock parcel must be separated from the residential parcel by a public street. Both the dock parcel and the residential parcel must include frontage on the same public street.

e. The approval of the dock parcel subdivision will not be given until the city is assured that the dock parcel cannot be separated from the residential parcel and sold separately without the consent of the city. The form and documentation to ensure satisfaction of this provision, which shall include a development agreement shall be subject to review and approval by the City Attorney and must be submitted in a form so as to allow for recording at the county.

f. Unless the time for compliance is extended by the City Council, the approval of the dock lot subdivision will be automatically cancelled and rescinded if the applicant has not furnished the city with evidence that the dock parcel and the residential parcel have been tax combined within 90 days following approval of the dock lot subdivision.

g. The dock parcel will not be subject to any of the lot area and dimension restrictions applicable to lots under chapter 129, pertaining to zoning; but must be of sufficient width to qualify for an LMCD dock license, where applicable.

h. The dock parcel subdivision shall not create any new nonconforming conditions.

i. Square footage of the dock parcel shall not be included in hardcover, lot area or lot coverage calculations for the residential parcel.

j. Dock parcel subdivision shall not trigger loss of lot of record status for the residential parcel.

k. No exterior storage shall be allowed on the dock parcel with the exception of water-oriented structures as outlined in article VIII of chapter 129, pertaining to shoreland protection including, but not limited to, boat lifts and docks. Boats, vehicles and trailers shall not be allowed to be stored on dock lots during the non-boating season.

l. Hardcover on dock parcel shall be no more than five percent.

m. No motor vehicles shall be parked on the dock parcel.

n. Dock parcel shall be used solely by the owners of the residential parcel and their guests and/or invitees and shall not be used for rental purposes.

o. No alteration of the existing public road or curb line, if applicable, shall be allowed on the dock parcel.

p. Placement of any dock shall be subject to the provisions of the LMCD, where applicable.

q. Dock parcel shall have the minimum frontage as required by the LMCD, where applicable, at the public street and along the lake as measured at the OHWL. If the applicant is seeking a variance from required frontage from the LMCD, granting of such variance shall be a precondition to subdivision.

r. In addition to the penalties provided in section 1-6, the city may pursue any remedy available in law or equity for a violation of this chapter.

(Code 1987, § 330.10; Ord. No. 79-1996, 8-27-1996; Ord. No. 02-2003, 6-8-2003; Ord. No. 07-2004, 8-8-2004; Ord. No. 13-2004, 12-26-2004; Ord. No. 06-2005, 5-19-2005; Ord. No. 10-2005, 6-26-2005; Ord. No. 07-2012, 8/5/12)

Sec. 121-34. General procedure.

Whenever any subdivision of land is proposed, before any contract is made for the sale of any part thereof and before any permit for the erection of a structure on such proposed subdivision shall be granted, the subdividing owner, or his authorized agent, shall apply for and secure approval from the city of such proposed subdivision in accordance with the following procedure:

(1) For minor subdivisions. A final subdivision plat.

(2) For major subdivisions.

a. A sketch plan.

b. A preliminary plat.

c. A final subdivision plat.

(Code 1987, § 330.15; Ord. No. 02-2003, 6-8-2003)

Sec. 121-35. Classifications of subdivisions.

Any division or land that is subject to the regulations in section 121-34 shall be considered to be either a major subdivision or a minor subdivision. The classification shall be determined under the following criteria:

(1) *Minor subdivision.* Residential subdivisions in this subsection shall be considered minor subdivisions. Any subdivision of land creating not more than three residential lots. Such lots must conform to all of the following:

a. Have frontage on an existing public road.

b. Not require the construction of any new public facilities or public improvements.

c. There will be no adverse effect on remaining or adjoining property.

d. There is no conflict with the comprehensive plan, zoning ordinance or official map.

(2) *Major subdivision.* Any division of land regulated by this chapter shall be considered a major subdivision unless specifically defined as a minor subdivision in subsection (1) of this section.

(Code 1987, § 330.20; Ord. No. 02-2003, 6-8-2003)

Sec. 121-36. Preapplication procedural requirements.

Prior to any subdivision, the subdividers or owners shall meet with the city planning staff in order to be made fully aware of all applicable ordinances, regulations and plans in the area to be subdivided. The staff will advise the applicant as to whether the matter may be processed as a minor or major subdivision. If it is determined that a major subdivision is required, the subdivider may submit a general sketch plan of the proposed subdivision and drainage plan. At the discretion of staff or upon request of the applicant, the sketch plan may be presented to the Planning Commission and Council for review. The sketch can be presented in a simple form but shall show any zoning changes that would be required and shall show that consideration has been given to the relationship of the proposed subdivision to existing city facilities that would serve it, to neighboring subdivisions and developments and to the topography of the site. If need be, the subdivider shall provide an area-wide concept platting plan for all neighboring properties. The subdivider is urged to seek the advice and assistance of the city staff in order to facilitate the approval of the preliminary or final plat. However, such advice should not be construed to predict approvals by the Planning Commission or final action by the City Council.

(Code 1987, § 330.25)

Secs. 121-37—121-60. Reserved.

DIVISION 2. PRELIMINARY PLAT

Sec. 121-61. Procedure.

(a) After the preapplication meeting, the subdivider shall file with the planning staff an application and 15 copies of the preliminary plat and one reduced (8½-inch by 11-inch) copy of the preliminary plat which has been prepared in accordance with the regulations set forth in this chapter. At the time of submission of the preliminary plat, all fees and escrows, as established by resolution, shall be paid in cash to the city and are to be placed in the general fund. The escrow shall be held in a special subdivider's escrow account and shall be credited to the said subdivider, owner or developer. Staff time and legal expenses incurred by the city in plat improvement, office and field checking, setting grade and drainage requirements, general supervision, staking, inspection, installation and cost of traffic control and street signs, drafting as-built drawings and all other city staff services performed in the processing of said improvements and plats, and administrative and legal expenses in examining title to the property being developed shall be charged to the aforementioned account and shall be credited to the city. At the time the final plat is released for recording and on or before submitting the required subdivider performance bonds, the subdivider shall make a cash deposit to cover the estimated total cost of the

aforesaid expenses as determined by the subdivider's rules hereinafter outlined. If, at any time, it appears that a deficit will occur in any subdivider's escrow account, as determined by the city and/or the City Attorney, said officials shall recommend to the Council that an additional deposit should be made and the Council may require that the subdivider, owner or developer shall deposit additional funds in the subdivider's escrow account. Any park dedication land/cash requirement shall also be paid at this time. A special cash escrow account will also be established to cover such items as boulevard sodding, utility adjustment repair and lot repair, streetlights, sidewalks or other items conditioned by the City Council. The city shall promulgate and adopt a set of rules, regulations and fees for services rendered by city personnel and said rules, regulations and fee schedules shall be on file with the City Clerk for inspection, and a copy thereof shall be furnished the subdivider, owner or developer. The city staff shall itemize all time, services and materials billed to any subdivider's escrow account and said time, services and materials shall be in accordance with the rules, regulations and fees as promulgated and adopted by the Council. The subdivider, owner or developer making the deposit in the subdivider's escrow account shall be furnished a copy, upon request, of said itemized charges, and any balance remaining in the account shall be returned to the depositor by the city after all claims and charges thereto have been paid.

(b) The planning staff shall refer copies of the preliminary plat to the city planner. A planning review will be made and a written report attached prior to forwarding to the Planning Commission.

(c) The planning staff shall refer copies of the preliminary plat to the city engineer. An engineering review will be made and a written report attached prior to forwarding to the Planning Commission.

(d) The planning staff shall refer copies of the preliminary plat to the parks department. A parks staff review will be made, as needed, and forwarded to the planning staff prior to forwarding an overall staff report to the Planning Commission.

(e) The planning staff shall refer the preliminary plat to the Planning Commission for their consideration and recommendation to the City Council. The planning staff shall arrange for a public hearing before the Planning Commission. The required legal publication and notification for public hearing shall be made in accordance with state statute.

(f) The subdivider or duly authorized representative shall attend the Planning Commission meetings at which this proposal is scheduled for consideration.

(g) The Planning Commission and City Council shall study the practicability of the preliminary plat taking into consideration the requirements of the city. Particular attention shall be given, but not limited to, the arrangement, location and width of streets, their relation to the topography of land, floodplain, wetlands, water supply, sewage disposal, drainage, lot sizes and arrangement, the present and future development of adjoining lands and the requirements of the zoning ordinance. The Planning Commission and City Council shall study and the Planning Commission shall make recommendations on the following:

(1) Whether the proposed subdivision is consistent with applicable specific area plans or the comprehensive plan;

(2) Whether the design is consistent with applicable development plans or policies;

(3) Whether the physical characteristics of the site including, but not limited to, topography, vegetation, susceptibility to erosion, siltation, flooding (pursuant to section 121-34, floodplain regulations) and water storage or retention are suitable for the type and/or density of development or use contemplated;

(4) The environmental impact of the subdivision design or proposed improvements;

(5) Whether the design of the subdivision or the type of improvement is consistent with easements of record or easements established by judgment of a court;

(6) Traffic considerations; and

(7) Any other aspect affecting the public health, safety or welfare.

The Planning Commission may recommend and the City Council may approve reasonable conditions on the plat to negate any problem areas.

(h) All persons interested in the proposed plat shall be heard at a public hearing held before the Planning Commission.

(i) The City Council shall hold a public hearing and act upon the preliminary plat and send written notification of their action to the applicant. The grounds for any refusal to approve a plat shall be set forth by the Council in a resolution and reported to the applicant in writing. Should the subdivider desire to amend the preliminary plat, as approved by the Council, he shall submit the amended plat following the original procedure set forth except for the public hearing and fees, unless the Planning Commission considers the scope of the revisions to constitute a new plat, then the hearing and fees shall be required.

(j) The subdivider may request a one-year time extension at least 45 days prior to the expiration of the preliminary plat as approved by the City Council. This request shall be reviewed by the Planning Commission and a recommendation forwarded to the City Council addressing such items as potential conflicts with the comprehensive plan or specific area plans, potential conflicts with policy changes, changing transportation conditions, sidewalk policies or applicable changes to any city ordinances. The city staff may recompute park dedication fees and other financial guarantees to reflect current cost estimates unless street, utility, grading or other substantial construction has begun. These revised costs shall be included in the time extension resolution.

(Code 1987, § 330.30)

Sec. 121-62. Requirements.

(a) *Survey and design information required.* The preliminary plat shall be clearly and legibly drawn at a scale ranging from 1":10', 1":20', 1":30', 1":40', 1":50' or 1":100' as accepted by the planning staff and the Planning Commission and shall contain the information set forth in this section.

(b) *Identification and description.*

(1) The proposed name of the subdivision, which name shall not duplicate or be alike in pronunciation to the name of any plat previously recorded in the county.

(2) The location of the subdivision by section, township, and range or by other legal description.

(3) The names and addresses and telephone numbers of the owners and/or petitioners, the subdivider, surveyor and/or designer.

(4) Graphic scale, north point, date of preparation and revision dates.

(c) *Existing conditions.*

(1) A boundary line drawing of the proposed subdivision, including measured distances and angles, which shall be tied into the nearest section or quarter section corner by traverse.

(2) Existing zoning classifications for land within the subdivision and on abutting property.

(3) Total acreage.

(4) Location, width, and name of every existing or previously platted street or other public way showing present and proposed width, railroad and utility right-of-way, parks and other public open spaces, permanent buildings and structures, easements, section lines, floodplain and wetland limits and corporate lines within the proposed subdivision and to a distance of 100 feet beyond.

(5) If the proposed subdivision is a rearrangement or replat of any former plat, the lot and block arrangement of the original plat along with its original name shall be indicated by dotted or dash lines. Also any revised or proposed to be vacated roadways of the original plat shall be so indicated.

(6) Location and size of existing sewers, water mains, pipelines, high voltage lines, culverts or other underground facilities within the tract and to a distance of 100 feet beyond the tract including such data as grades, invert elevations, and locations of catchbasins, manholes, and hydrants.

(7) Boundary lines of adjoining unsubdivided or subdivided lands within 100 feet.

(d) *Subdivision design features.*

(1) Layout of proposed streets showing right-of-way widths and proposed street names. If the proposed street is an extension of an existing named street, that name shall be used. In all other cases, the name of any street previously used within the county shall not be used unless such use is consistent with the county or city street naming system.

(2) Locations and widths of alleys, pedestrianways, utilities, and drainage plan.

(3) Layout, numbers, and preliminary dimensions of lots and blocks including the area (in square feet) of each proposed lot.

(4) Areas intended to be dedicated or reserved for public use including their size (in acres or square footage).

(5) Areas intended for uses other than residential or public.

(6) Minimum front and side street building setback lines as required in the zoning district in which the subdivision is located. In cases where the slope of lot areas exceeds ten percent, the preliminary plat shall note the type of housing unit to be placed on the lot.

(Code 1987, § 330.40; Ord. 02-2012, 4-8-2012)

Sec. 121-63. Supplementary information required.

(a) The information set forth in the subdivisions of this section shall be filed with the preliminary plat.

(b) A complete topographic map at a scale of 1":100', 1":50', 1":40', 1":30', 1":20' or 1":10' and with contour intervals not greater than two feet showing watercourses, floodplain limits, designated wetlands, marshes, rock outcrops, and other significant features at least 100 feet beyond the boundary of the proposed plat, at least one print of the preliminary plat shall be superimposed on a copy of the topographic map. U.S. Geodetic Survey datum shall be used for all topographic mapping.

(c) Soil absorption tests where septic tanks are proposed and any other subsoil information requested by the city engineer's staff including soil borings and water table data.

(d) Plans for water supply, sewage disposal, proposed and finished grades, drainage and flood control, including the proposed locations, size and gradients of the proposed sewer lines and water mains and such other supporting data as may be required by the city staff, the Planning Commission, and all rules and regulations.

(e) Centerline gradients of proposed streets and alleys.

(f) Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the Planning Commission may require that the subdivider submit a sketch plan of the rest of his properties so as to show the relationship of the proposed subdivision to the future development of the adjacent property.

(g) Indicate if the land is registered or abstract property.

(h) Indicate other information as requested by the planning staff, public works or parks and recreation such as streetlights, sidewalks, walkways, bikeways, berming or landscaping with a schedule of plantings or anticipated ground level building elevations.

(Code 1987, § 330.45)

Sec. 121-64. Qualifications governing approval.

(a) The approval of a preliminary plat by the City Council shall only constitute acceptance of the design as a basis for the preparation of the final plat by the owners or subdividers. Subsequent approval by appropriate officials having jurisdiction will be required of the engineering proposals pertaining to water supplies, storm drainage, sewage disposal, sidewalks, grading gradients, and roadway widths and the surfacing of street prior to the approval of the final plat by the city.

(b) No plan will be approved for a subdivision which includes any area subject to periodic flooding or which contains extremely poor drainage facilities which would make adequate drainage of the streets and lots impossible unless the subdivider agrees to make improvements which will, in the opinion of the city engineer, make the area completely safe for occupancy and provide adequate street and lot drainage and is not in conflict with the floodplain map on file with the city engineer.

(c) No plan for a subdivision will be approved until it is determined by the city engineer that the proposed plat is consistent with all city requirements relating to stormwater and stormwater management.

(Code 1987, § 330.50)

Secs. 121-65—121-86. Reserved.

DIVISION 3. FINAL PLAT

Sec. 121-87. Procedure.

(a) The subdivider, within one year, unless extensions are granted and noted in the preliminary plat resolution, after the approval of the preliminary plat, shall file with the planning staff ten copies of the final plat prepared by a land surveyor duly registered in the state. Failure of the subdivider to submit the final plat within those times designated on the preliminary plat resolution shall cause the preliminary and final plats to become null and void.

(b) The subdivider shall also submit to the City Attorney, at the same time, an up-to-date certified abstract of title or registered property report and such other evidence as the City Attorney may require showing title or control of the land by the subdivider.

(c) The subdivider shall have incorporated all changes or modifications required by the City Council but in all other respects, the final plat shall conform to the preliminary plat.

(d) If the subdivider requests that any special assessments which have been levied against the property described be divided and allocated to the respective lots in the proposed plats, the city engineer shall estimate the clerical cost of preparing a revised assessment roll, filing the same with the county auditor and making such division and allocation and upon approval by the City Manager of such estimated cost, the same shall be paid by the subdivider to the city from the subdivider's escrow account.

(e) The required utility layout shall be submitted by the subdivider to the city engineer for his cost estimate. A copy of the engineer's report shall be submitted to the planning staff for the preparation of the contract required in section 121-146.

(f) The planning staff, upon receipt of the final plat, shall retain one copy of the final plat for review and shall refer:

(1) Copies of the final plat to the city staff and the City Council who shall review the final plat with respect to its conformance with the approved preliminary plat;

(2) The current abstract of title or registered property report to the City Attorney for his examination and report. The City Attorney's written report shall be submitted to city staff within 15 days of its receipt by the attorney.

(g) The City Council shall, by resolution, authorize signature of the final plat.

(h) If a report from the planning staff indicates there is a substantial deviation in the final plat from the approved preliminary plat, the City Council may determine if the submission does represent a new plat. If the submission does represent a new plat, the City Council may deny the final plat and direct the subdivider to resubmit his proposal following preliminary plat requirements.

(i) No changes, erasures, modifications or revisions shall be made in any final plat after approval has been given by the City Council and endorsed in writing on the plat, unless the plat is first resubmitted to the City Council and such body approves said modifications. In the event that any such final plat is recorded without complying with this requirement, the same shall be considered null and void and the City Council shall institute proceedings to have the plat stricken from the records of the city.

(Code 1987, § 330.35)

Sec. 121-88. Requirements.

The final plat shall be prepared in accordance with Minn. Stats. § 505.021. The plat may consist of more than one sheet, numbered progressively.

(Code 1987, § 330.55)

Sec. 121-89. Mylar required.

The developer is required to supply the city with a complete, signed, and recorded Mylar of the final plat.

Secs. 121-90—121-114. Reserved.

ARTICLE III. DESIGN STANDARDS*

***State law reference—**Design standards authorized, Minn. Stats. § 462.358, subd. 2a.

Sec. 121-115. General requirements.

(a) The Planning Commission and the City Council in their review of the preliminary plat will take into consideration the requirements of the city and the best use of the land being subdivided.

(b) The subdivision shall conform to chapter 129, pertaining to zoning, and shall be in substantial conformance to the goals and policies set forth in the comprehensive plan.

(c) The arrangement, character, extent, width, and location of all streets shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographic conditions, to runoff of stormwater, to public convenience and safety, and in their approximate relation to the proposed uses of the land to be served by such streets. Wherever possible and necessary, the arrangement of streets in new subdivisions shall provide for the continuation of existing streets in adjoining areas. Where adjoining unsubdivided areas may be subdivided, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by carrying the new streets to the boundaries of the new subdivision at appropriate locations.

(Code 1987, § 330.90)

Sec. 121-116. Streets.

(a) *Widths.* Street right-of-way widths shall not be less than the following:

(1) Minor arterial streets, a minimum of 100 feet.

(2) Collector streets, a minimum of 60—80 feet.

(3) Minor collector streets, a minimum of 60 feet.

(4) Local streets, a minimum of 50 feet.

(b) *Intersections.* Insofar as practical, streets shall intersect at right angles. In no case shall the angle formed by the intersection of two streets be less than 75 degrees. Intersections having more than four corners shall be prohibited. Intersections shall not be closer than 150 feet from centerline to centerline.

(c) *Deflections.* When connecting street lines deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a radius of not less than 100 feet, except in those cases specifically approved by the City Council.

(d) *Gradients.* All centerline gradients shall be at least 0.5 percent and shall not exceed the following:

(1) Minor arterial streets not more than five percent.

(2) Collector streets not more than five percent.

(3) Minor collector streets not more than five percent.

(4) Local streets not more than eight percent.

(e) *Vertical curves.* Different connecting street gradients shall be connected with vertical curves. Minimum length in feet of these curves shall be 20 times the algebraic difference in the percent of grade of the two adjacent slopes.

(f) *Street jogs.* Street jogs with centerline offsets of less than 150 feet shall be prohibited as measured from centerline to centerline.

(g) *Subdivision streets.* Subdivision streets shall be laid out so that their use by through traffic will be discouraged.

(h) *Culs-de-sac*. The maximum length of a street terminating in a cul-de-sac shall be 500 feet, measured from the centerline of the street of origin to the center of the cul-de-sac, and shall have a radius of 50 feet.

(i) *Access to collector or arterial streets.* Where a proposed plat is adjacent to a collector or minor arterial street, the applicant is advised not to direct vehicle or pedestrian access from individual lots to such thoroughfares. Where possible, the subdivider shall attempt to provide access to all lots with subdivision streets.

(j) *Half streets.* Half streets shall be prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half street may be permitted. The probable length of time elapsing before dedication of the remainder shall be considered in this determination.

(k) *Private streets.* Private streets shall not be permitted nor shall public improvements be approved for any private street unless approved by the City Council as part of a conditional use permit for an overall development plan.

(l) *Hardship to owners of adjoining property.* The street arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

(m) *Dedication of streets.* Except for private streets, as designated in subsection (k) of this section, all proposed streets shown on the plat shall be offered for dedication as public streets.

(Code 1987, § 330.95)

Sec. 121-117. Alleys.

(a) *Location requirements.* Except in the case of a shopping center planned as a unit with off-street parking and loading space, either a public or private alley shall be provided in a block where commercially zoned property abuts a major thoroughfare or a major street. Alleys in residential areas, other than those zoned for multiple use, will not be permitted except by special permission of the City Council.

(b) *Widths.* Alleys, where permitted by the City Council, shall be at least 20 feet wide in residential areas and at least 30 feet wide in commercial areas with adequate provisions for snow storage. Such snow storage locations shall be approved by the City Council.

(c) *Grades.* All centerline gradients in alleys shall be at least 0.5 percent and shall not exceed eight percent.

(Code 1987, § 330.100)

Sec. 121-118. Easements.

(a) *Utilities.* Easements to a width as determined by the city engineer or at least 15 feet wide centered on rear or other lot lines shall be provided for utilities where necessary. They shall have continuity of alignment from block to block and at the deflection points, easements for a pole line anchor shall be provided where necessary.

(b) *Drainage.* Easements shall be provided along each side of the centerline of any watercourse or drainage channel to a width sufficient to provide proper maintenance and protection and to provide for stormwater runoff and installation and maintenance of storm sewers. Where necessary, drainage easements corresponding with lot lines shall be provided. Such easements for drainage purposes shall not be less than five feet in width each side of the lot line. Except where an overall drainage and utility development plan for subdivisions has been approved by the city engineer, all lots shall be graded in such a manner to avoid additional drainage encroachment onto adjacent properties. This restriction shall apply during and after construction is complete.

(c) *Dedication.* All easements shall be dedicated for the required uses by appropriate language on the plat, as required by Minn. Stats. § 505.03, subd. 1.

(Code 1987, § 330.105)

Sec. 121-119. Blocks.

(a) *Length.* The appropriate length of a block shall be determined by existing natural features such as topography and wetland locations. All blocks shall have a minimum length of 300 feet and blocks over 900 feet long may require pedestrianways at least ten feet wide at their approximate center. The use of additional pedestrianways to schools, parks, commons, and other destinations may be required.

(b) *Arrangements.* A block shall be so designed as to provide two tiers of lots unless it adjoins a railroad, collector, or a minor arterial street system or other types of barriers in the form of schools, parks, major developments, corporate limits, or other major uses where it may have a single tier of lots.

(Code 1987, § 330.110)

Sec. 121-120. Lots.

(a) *Location.* All lots shall contain frontage on a publicly dedicated street.

(b) *Size.* The lot dimensions shall be such as to comply with the minimum lot areas specified in chapter 129, pertaining to zoning. Lot square footages shall be designated on the preliminary plat. A letter shall accompany the final plat, certified by an engineer or surveyor, that all lot sizes meet plat requirements.

(c) *Transition lots.* When platting is adjacent to incompatible land uses, except parks, depth of lots shall be increased to allow for open space, berming, or other landscaping techniques to buffer each land use.

(d) *Side lot lines.* Sidelines of lots shall be substantially at right angles to straight street lines or radial to curved street lines.

(e) *Watercourses.* Lots abutting a watercourse, drainageways, channel or stream shall have sufficient depth and width to provide a minimum area of land not subject to flooding and equal to the minimum lot dimensions specified in chapter 129, pertaining to zoning for the district in which the lots are located.

(f) *Drainage.* Lots shall be graded so as to provide drainage away from building locations. All landscaping features such as retaining walls and filling or grading within drainage and utility easements shall be reviewed and approved by the city engineer and the city planner.

(g) *Natural features.* In the subdividing of land, due regard shall be shown for all natural features such as tree growth, watercourses, historic spots or similar conditions and plans adjusted to preserve those which will add attractiveness and stability to the proposed development.

(h) *Lot remnants.* All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots rather than allowed to remain as unusable parcels.

(i) *Minimum rear lot line.* Where practical, all lots shall have a minimum of 30 feet in width at the rear lot line.

(j) *Double frontage lots.* Double frontage (lots with frontage on two parallel streets) or reverse frontage shall not be permitted except where lots back against a collector or arterial street. Such lots shall have additional depth to allow for screening and/or planting along the back lot line. Vehicular access may be restricted as a condition of the plat.

(k) *Cul-de-sac lots.* If the front line of any lot shall be a curve or partial curve, the frontage for purposes of minimum requirements will be measured at the building setback line. The front footage of the front lot line shall be as allowed under the provisions outlines in chapter 129, pertaining to zoning.

(Code 1987, § 330.115)

Sec. 121-121. Public sites and open spaces and park land dedication.

(a) *Public sites and open spaces.* Where a proposed park, playground, or other public site shown on the adopted comprehensive plan or official map is embraced, in part or in whole, by a boundary of a proposed subdivision and such public sites are not dedicated to the city, such public ground shall be shown as reserved land on the preliminary plat to allow the city the opportunity to consider and take action toward acquisition of such public ground or park by purchase or other means prior to approval of the final plat.

(b) *Park land dedication.* In every plat, replat, or subdivision of land allowing development for residential, commercial, industrial, or other uses or combination thereof, or in a planned development area, or where a waiver or variance is granted, a reasonable portion of such land and/or cash shall be set aside and dedicated by the tract owner or owners to the general public as open space for park and playground purposes or public ponds except where adjustments to lot lines do not create additional lots. Ten percent of the property may be used for residential, multiple-family residential, commercial business or industrial purposes shall be deemed a reasonable portion. Said land shall be suitable for public use as parks and playgrounds or for one of the aforementioned described purposes, and the city shall not be required to accept land which will not be usable for parks and playgrounds or which would require extensive expenditures on the part of the public to make them usable.

(c) *Contribution of cash in lieu of land.* At the city's option, except for minor subdivisions as herein defined, the subdivider shall contribute an equivalent amount of cash, in lieu of all or a portion of the land which the city may require such owner to dedicate pursuant to subsection (b) of this section, in accordance with the schedule to be set by resolution of the Council which cash contribution shall be as

established by the city. A minor subdivision is a case where three residential lots or less are to be subdivided or created by a division and in those minor subdivisions the park land dedication shall be pursuant to a schedule to be set by resolution of the Council. The cash dedication fee for minor subdivisions will be as established by the city for each new lot being created. In cases where one lot is split into two lots, it is determined that only one new lot is being created.

(d) *Public use provisions can be consideration.* Where the owner provides for public use, neighborhood park amenities such as, but not limited to, tennis courts, ball fields, open space or other recreational facilities, the city may reduce the amount of land to be dedicated or the cash contribution in lieu of the facilities provided.

(e) *Contributions prior to final plat filing.* Cash contributions required by subsection (c) of this section shall be made prior to filing the final plat.

(f) *Application of section.* This section shall not apply to the division of platted lots that are being combined with other existing lots to increase the lot sizes to conform to the larger sized lots required by chapter 129, pertaining to zoning. This exception is in recognition of the need to put undersized lots together to bring them into conformance with zoning requirements adopted after the original subdivision of properties, many of which predate any zoning regulations of the city.

(Code 1987, § 330.120; Ord. No. 30-1989, 6-26-1989; Ord. No. 75-1995, 8-22-1995; Ord. No. 04-2002, 2-24-2002)

Sec. 121-122. Road naming and house numbering.

(a) *Road designations.* The use of road, street, avenue, parkway, trail, drive, boulevard, way, court, terrace, and circle suffixes shall be used in identifying location and direction of roads. Roads shall be designated as follows:

(1) Roads that both originate and terminate on the same street are circles.

(2) Culs-de-sac (dead ends) are named courts.

(3) A road shall have only one name for its entire length.

(4) No two roads shall be named alike, that is, have the same name or have similar sounding names.

(5) The name of a road will change only if the road changes direction 45 degrees or more at the point of deviation.

(6) If the proposed street is an extension of an existing named street, that name shall be used. In all other cases, the name of any street previously used within the county shall not be used unless such use is consistent with the county or city street naming system.

(7) Street names shall not include the term "wood" (e.g., Gumwood, Maywood, etc.).

(b) *House numbering system.* The standard method of assigning house numbers to each side of the street shall be as follows:

(1) On east and west roadways, even numbers are to be assigned to the north side of the roadway and odd numbers are to be assigned to the south side of the roadway.

(2) On north and south roadways, even numbers are to be assigned to the east side of the roadway and odd numbers are to be assigned to the west side of the roadway.

(3) On roadways with a deviation of more than 45 degrees from a north-south base line, even numbers are to be assigned to the north side of the roadway and odd numbers are to be assigned to the south side of the roadway. On roadways with a deviation of 45 degrees or less from the north-south base line, even numbers are

to be assigned to the east side of the roadway and odd numbers are to be assigned to the west side of the roadway.

(4) Circle streets are to be assigned numbers in staggered sequence to the number sequence of the drive, avenue, or parkway on which it originates and terminates.

(5) Dead-end roads are to be assigned numbers as if the road continued through, beginning with the smallest number of sequence at the road origin that follows other or similar streets.

(6) Courts are to be assigned numbers conforming to the numerical sequence of the drive, avenue, or parkway on which it originates.

(7) On a street that deviates 45 degrees or more (measured at the point of deviation), the number sequence will change accordingly.

(8) One-family dwellings and duplexes. One number will be assigned to each residential unit determined by the location of the principal entrance.

(9) Multiple-family dwellings. A number will be assigned to the entire structure with individual numbers or letters assigned to each dwelling unit starting with number one. In multiple dwelling units consisting of two or more floors, each floor shall be designated in sequential order starting from the bottom up.

(10) Business structures. A number will be assigned to each entrance but only one number per building establishment for each street frontage.

(11) Split lots. A structure located on two or more lots will be assigned a number determined by the location of the fronting entrance.

(12) Blocks. A structure located on the entire length or width of a grid block will be assigned a number determined by the location of the fronting entrance.

(13) Corner lots. A structure located on a corner lot will be assigned a number determined by the principal entrance. If the structure is so located that it would be considered fronting on either street, then it would be assigned a number determined by the north-south number sequence.

(Code 1987, § 330.125)

Secs. 121-123—121-142. Reserved.

ARTICLE IV. REQUIRED IMPROVEMENTS

Sec. 121-143. City participation—Residential developments.

(a) *Certain improvements.* The owner or subdivider engaged in the development of lands and properties which are zoning as residential districts may request city participation in the payment of the costs of the installation of sanitary sewer, water, street, including curb and gutter, and storm sewer improvements required by this ordinance and, in such event, such owner or subdivider shall comply with the requirements of this section.

(b) *Financial guarantee.* The owner or subdivider shall make a financial guarantee with the city in an amount equal to 125 percent of the estimated cost of installing such improvements as such costs are determined by the city engineer. The financial guarantee shall be applied to the costs of such installations.

(c) *Installation by city.* All such improvements shall be planned and designed by the city engineer and shall be installed by the city. The administrative charges of the city engineer in connection with such improvements shall be included in the costs determined in subsection (b) of this section.

(d) *Assessment.* Upon completion of such improvements, the city shall cause to be specially assessed, in the manner provided by Minn. Stats. ch. 429, the remaining costs of the improvements against the lots in the subdivision over a period of five years together with interest thereon. At the time of

application for a building permit with respect to any of the lots in the subdivision, the applicant shall have the option of paying to the city the principal balance of such assessment remaining unpaid together with accrued interest thereon.

(Code 1987, § 330.155)

Sec. 121-144. Same—Nonresidential developments.

(a) *Certain improvements.* The owner or subdivider engaged in the development of land and properties which are zoned for nonresidential districts may request city participation in the payment of the costs of the installation of sanitary sewer, water system, storm sewer, streets, and curb and gutter improvements and, in such event the owner or subdivider shall comply with the requirements of this section.

(b) *Assessments.* The procedure for the installation and assessment of the cost of improvements under this section shall be the same as that provided for improvements in land in areas zoned for residence classifications pursuant to section 121-143, except that:

(1) Special assessments for the cost of sanitary sewer, storm sewer, and water system improvements shall be for a period of 15 years.

(2) The bond or letter of credit guaranteeing payment of the special assessments for sanitary sewer, storm sewer and water system improvements shall obligate the owner or subdivider for a period of four years.

(Code 1987, § 330.160)

Sec. 121-145. Improvements to be accepted prior to final plat or contract.

Improvements within a subdivision which have been completed prior to application of the final plat or execution of the contract for installation of the required improvements shall be accepted as equivalent improvements in compliance with the requirements of section 121-146 only if the city engineer shall certify that the existing improvements conform to applicable city standards.

(Code 1987, § 330.165)

Sec. 121-146. List of improvements pertaining to utilities.

The intent of this section is to list provisions of approval for required improvements specifically dealing with availability of utilities as follows:

(1) *Subdivider's agreement to install.* Prior to the approval of a final plat by the City Council, the subdivider shall have agreed, in the manner set forth in this section, to install the improvements on the sites as described in this section. All such improvements shall be made in accordance with plans and specifications prepared by a registered professional engineer and approved by the city engineer and in accordance with all applicable standards and ordinances of the city.

(2) *Monuments.* Monuments of a permanent character, as required by Minn. Stats. § 505.02, shall be placed at each corner or angle on the outside boundary of the subdivision, and pipes or steel rods shall be placed at each corner and directional change of each lot and each intersection of street centerlines.

(3) *Streets and alleys.* The full width of the right-of-way of each street and alley dedicated in the plat shall be graded and improved. All streets and alleys shall have an adequate subbase and shall be improved with an all-weather permanent surface.

(4) *Curb and gutter.* A concrete curb and gutter shall be installed on both sides of each street dedicated in the plat.

(5) *Water supply.* Water mains shall be provided to serve the subdivision by extension of the existing city system. Service connections shall be stubbed into

the property line, and all necessary fire hydrants shall also be provided. Extensions of the public water supply system shall be designed so as to provide public water in accordance with the standards of the city.

(6) *Sewage disposal.* Sanitary sewer mains and service connections shall be installed to serve all the lots in the subdivision and shall be connected to the public system.

(7) *Drainage.* The grade and drainage requirements for each plat shall be reviewed by the city engineer at the expense of the applicant. Every plat presented for final signature shall be accompanied by a certificate from the city engineer that the grade and drainage requirements have been met. In an area not having municipal storm sewer trunk service, the applicant shall be responsible (before platting) to provide for a stormwater disposal plan, without damage to properties outside the platted area, and said stormwater disposal plan shall be submitted to the city engineer who shall report to the Council on the feasibility of the plan presented. No plat shall be approved before an adequate stormwater disposal plan is presented to the city engineer and approved by the City Council. The use of dry wells for the purpose of stormwater disposal is prohibited.

(8) *Trees.* Planting of street or boulevard trees is encouraged; however, in no case shall trees be planted within public rights-of-way except by City Council approval.

(9) *Traffic control and street signs.* Traffic control signs, pursuant to Minn. Stats. § 169.06, and street signs of standard design approved by the city shall be installed at each street intersection or at such other locations within the subdivision as designated by the city engineer.

(10) *Utility lines and appurtenances.* All utility lines for telephone cable, television, streetlights, and electric service shall be placed underground in the street right-of-way or adjacent easements. Allowances shall be made for appurtenances and associated equipment such as surface mounted transformers, pedestal mounted terminal boxes, and meter cabinets.

(11) *Streetlights.* Streetlights shall be installed per city specifications at all intersections and at other locations as required by the city engineer.

(12) *Sidewalks.* All plats with lots or tracts abutting on collector, minor arterial, state trunk highways, municipal state-aid street and county roads shall have concrete sidewalks installed between the lot line and the aforementioned streets in accordance with city specifications.

(13) *Driveways.* In all subdivisions, the subdivider shall provide concrete or bituminous driveways in accordance with the following standards:

a. There shall be installed a concrete or bituminous driveway extending from the back of the curb or from the edge of the service street to the garage floor or garage floor apron for each lane of vehicular access to the street. If a building permit is issued and no garage is to be constructed, the concrete or bituminous driveway must be completed to the depth of the front yard setback as established in chapter 129, pertaining to zoning.

b. No residential curb or driveway opening into any public street shall be made unless the aforesaid is constructed of concrete, bituminous, or an acceptable alternative approved by the city engineer and is installed in accordance with subsection (13)a of this section.

c. No driveway shall be less than ten feet in width or more than 24 feet in width without special approval from the City Council.

d. All concrete or bituminous driveways shall be constructed in accordance with the city specifications.

(14) *Walkways/pedestrianways.* Walkways shall be placed in strategic locations and should be installed only when necessary. The installation of a walkway should be completed by the developer prior to the sale of the abutting properties and designated on the approved plat as a walkway easement. Locations shall be at the discretion of the City Council in conformance with section 121-119.

(Code 1987, § 330.130; Ord. No. 06-2006, 2-26-2006)

Sec. 121-147. Improvements required payment for installation.

The required improvements to be furnished and installed by the subdivider, which are listed and described in section 121-146, are to be furnished and installed at the sole expense of the subdivider and at no expense to the city provided, however, that in the case of an improvement, the cost of which would be general policy of the city be assessed only in part to the improved property and the remaining cost paid out of general tax levy, the City Council may make provision for payment of a portion of the cost by the city. If any improvement installed within the subdivision will be of substantial benefit to lands beyond the boundaries of the subdivision, the City Council may make provision for causing a portion of the cost of the improvement representing the benefit of such lands to be assessed against the same in such case the subdivider will be required only to pay for such portions of the whole cost of said improvements as will represent the benefit to the property within the subdivision.

(Code 1987, § 330.135)

Sec. 121-148. Improvements required, agreement providing for proper installation of improvements.

(a) Prior to installation of any required improvements and prior to approval of the final plan, the subdivider shall enter into a contract, in writing, with the city requiring the subdivider to furnish and construct said improvements at his sole cost and in accordance with the plans and specifications and usual contract conditions. Such contract shall be approved by the City Council which shall include provisions for supervision of details of construction by the city engineer. The subdivider shall secure the city by a cash deposit, certified check, or, in lieu thereof, furnish a performance bond as hereinafter set forth in section 121-145.

(b) Upon request of the subdivider, the contract may provide for completion of part of all of the improvements covered thereby prior to acceptance of the plat and in such event, the amount of deposit or bond shall be reduced in a sum equal to the estimated cost of the improvements so completed prior to acceptance of the plat, and the amount of deposit or bond shall equal only the estimated cost of the improvements to be furnished after the acceptance of the plat. The time for completion of work and the several parts thereof shall be determined by the City Council upon recommendation by the city engineer, after consultation with the subdivider, and shall be reasonable in relation to the work to be done, the season of the year, and the proper correlation with construction activity in the subdivision.

(Code 1987, § 330.140)

Sec. 121-149. Improvements required/financial guarantee.

(a) The contract provided by section 121-148 shall require the subdivider to make cash deposit, certified check, or in lieu thereof, furnish performance bonds as follows:

(1) *Performance bonds, et al.* The subdivider shall secure the city by a performance bond, letter of credit, savings certificate, certified check, or a cash deposit in a sum equal to 125 percent of the total cost of all improvements including the cost of final inspection by the city as estimated by the developer's engineer and reviewed by the city engineer. These surety guarantees shall be filed with the

city prior to release of the final plat for recording. All surety guarantees shall also contain a clause which guarantees said improvements for a period of one year after acceptance by the city of said improvements. In lieu of this clause, a separate one-year maintenance bond, approved as to form by the City Attorney, shall be submitted to the planning staff upon acceptance of said improvements by the City Council. Upon receipt of this maintenance bond, the performance bond may be released.

(2) *Cash escrow.* A special cash escrow shall be submitted to the city in an amount established by the city. This escrow is to be used by the city staff to charge costs of services or materials when working with specific plats. If the escrow account nears the point of depletion, the city shall notify the developer that additional escrow cash must be placed in the escrow account. If all or a part of a development has been completed, inspected, and accepted, all escrow monies for that portion accepted by the city may be reduced by the City Council and full or partial payment be returned to the developer. Upon acceptance of all items covered in the developer's contract, the City Council shall return the unused escrow balance to the developer.

(b) The guarantees in subsection (a) of this section will not be transferred, in whole or in part, to other subdivisions, waivers, or conditional use permit accounts or different legal parcels not a part of the original approval unless permission in writing is received from the developer to make said transfers.

(Code 1987, § 330.145)

State law reference—Authority to require guarantees, Minn. Stats. § 462.358, subd. 2a.

Sec. 121-150. Improvements required, construction plans.

(a) Construction plans for the required improvements conforming in all respects to the standards of the city engineer and the ordinances of the city shall be prepared at the subdivider's expense by a professional engineer who is registered in the state, and said plans shall contain an appropriate seal.

(b) Such plans together with the quantity of construction items and an estimate of total cost of the required improvements shall be submitted to the city engineer for approval. Upon approval, they shall become a part of the contract required in section 121-148. Reproducible as-built plans approved by the city engineer, plus two prints and electronic/digital copies, in a format acceptable to the city, shall be furnished to the city to be filed by the city engineer as a record.

(c) All required improvements on the site that are to be installed under the provisions of this chapter may be periodically inspected during the course of construction by the city engineer at the subdivider's expense, and acceptance shall be subject to the city engineer's final inspection and certificate of compliance with the contract.

(Code 1987, § 330.150)

Chapter 125

TRAILERS AND TRAILER PARKS

ARTICLE I. IN GENERAL

Sec. 125-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved sewer system means and shall include the city sewer system or an individual sewage disposal system constructed in accordance with the specifications of the state department of health.

Approved water system means and shall include the public water system of the city of a private well and water therefrom, which is in all respects constructed in accordance with the rules and regulations of the state department of health.

Trailer means an automobile trailer, trailer coach, or any vehicle or structure so designed and constructed in such a manner as will permit occupancy thereof as office or living quarters for one or more persons, and so designed that it is or may be mounted on wheels and used as a conveyance on highways or streets, propelled or drawn by its own or other motive power. Manufactured homes built in conformance with Minn. Stats. §§ 327.31—327.35 shall not be deemed to be a trailer within the meaning of this chapter.

Trailer coach park means any site, lot, field, or tract of land upon which two or more occupied trailers are harbored, either free of charge or for revenue purposes, and shall include any building, structure, tent, vehicle, or enclosure used or intended to be used as part of the equipment of such trailer coach park.

(Code 1987, § 315.01)

Sec. 125-2. Conflict with state.

Nothing herein contained shall be construed to apply to any manufactured home park in the city which is licensed by the state department of health pursuant to Minn. Stats. §§ 327.14—327.28.

(Code 1987, § 315.40)

Sec. 125-3. Variances.

(a) The Council may grant variances/modifications from this chapter upon a finding that all of the following conditions exist:

(1) There are special circumstances or conditions affecting said property, such that the strict application of the provisions of this Code would deprive the applicant of the reasonable use of his land.

(2) The variances/modifications are necessary for the preservation of and enjoyment of a substantial property right of the petitioner.

(3) The granting of the variances/modifications will not be detrimental to the public welfare or injurious to the other property in the territory in which said property is situated and will not have an adverse effect upon traffic or traffic safety.

(b) Making this finding, the Council shall consider the nature of the proposed use of

the land and existing use of the land in the vicinity, the number of persons who reside or work in the area, and the probable affect of the proposed variance upon traffic conditions in the vicinity.

(c) In granting variances/modifications as herein provided, the Council shall prescribe conditions that it deems desirable where necessary to protect the public interest. In making a determination, the Council shall find that:

(1) The proposed project will constitute a desirable and stable city development.

(2) The proposed project will be in harmony with the adjacent areas.

(3) The application shall be made in writing and addressed to the Planning Commission and the City Council and shall be submitted to the City Clerk.

(d) Such application shall include the specific variances/modifications request, its location, and how it varies from the provisions of this Code. The written application shall be submitted to the Planning Commission for its advice and recommendation, and the Planning Commission shall report on the provisions set forth in this section.

(Code 1987, § 325.05/ Ord. No. 08-2010, 10-31-2010)

Sec. 125-4. Enforcement of chapter.

It is hereby made the duty of the health officer of the city to enforce all provisions of this chapter, and for the purpose of securing such enforcement, the health officer shall have the right to enter upon any premises on which trailers are located, and inspect the same, and all accommodations connected therewith, at any reasonable time, after securing the approval of the City Council under the provisions of this chapter and the zoning ordinance; provided, however, that nothing herein contained shall be construed to apply to manufactured home parks that are licensed by the state pursuant to Minn. Stats. §§ 327.14—327.28.

(Code 1987, § 315.05)

Sec. 125-5. Trailer committee; appeal procedure.

(a) The Council, upon request as provided in subsection (b) of this section, shall sit as the trailer committee to hear the complaint of any person aggrieved under this chapter or by the act of any official under this chapter.

(b) Any person aggrieved by an order of the health officer under this chapter may file a written request with the City Clerk for a hearing before the trailer committee within ten days after the issuance of said order, such request shall be accompanied by an appeal fee as established by the city, and a deposit as set by the Council to defray expenses for providing notices of hearing and other incidental costs. The balance remaining after paying such costs shall be refunded to such person as soon as the amount of such costs has been determined. Upon receiving such written request and deposit, the City Clerk shall then cause to be published notice of hearing before the trailer committee, once at least ten days prior to such hearing, at which hearing all persons having an interest therein shall be given an opportunity to be heard. After such hearing, and upon hearing and considering all matters presented thereat, the trailer committee shall make its findings and recommendations and cause a copy thereof to be presented to the next Council session for action and disposition.

(Code 1987, § 315.35)

Sec. 125-6. Parking or storing in locations outside of park; emergencies.

(a) *Unlawful parking.* It shall be unlawful for any person to park any trailer on any street, alley, highway, or other public place, or on any tract of land owned by any person,

occupied or unoccupied, within the city except as provided in this chapter.

(b) *Emergency parking.* Emergency or temporary parking or stopping is permitted on any alley, street, or highway for not longer than 24 hours, subject to any other and further prohibitions, regulations, or ordinances for that street, alley, or highway.

(c) *Storing of trailers.* No person shall park or occupy any trailer on the premises of any occupied dwelling or in or on any lot which is not a part of the premises of any occupied dwelling either of which is situated outside an approved trailer coach park, except the parking of only one unoccupied trailer in an accessory private garage building, or in a rear yard of any district, is permitted providing no living quarters shall be maintained or any business practiced in said trailer while said trailer is so parked or stored.

(d) *Sales service of trailers.* Any person dealing in the buying and selling of trailers may park or store one or more unoccupied trailers on lands which are zoned within the city so as to permit automobile sales service.

(e) *Storing of trailers, commercial district.* No person shall park or occupy any trailer on the premises of any building or on any lot in the commercial use district which is outside an approved trailer coach park, except that the parking of one unoccupied trailer in an accessory private garage building, public garage building, or in a rear yard and so situated as to not be visible from the street, is permitted providing no living quarters shall be maintained or any business practiced in said trailer while such trailer is so parked or stored.

(f) *Construction shacks.* Notwithstanding the foregoing provisions, the trailer owned by a bona fide contractor or subcontractor is permitted to be parked upon any construction site for use as a construction shack for a job during the period of construction and up to 30 days after completion thereof.

(Code 1987, § 315.10)

Secs. 125-7—125-30. Reserved.

ARTICLE II. PERMITS

Sec. 125-31. Required.

(a) *Temporary permits available.* A trailer shall not be used as a permanent place of abode or as a permanent dwelling or for indefinite periods of time; provided, that any trailer properly connected with an approved water system and with an approved sewer system, and constructed and located in compliance with all requirements of the plumbing, sanitary, health, zoning, and electrical ordinances and regulations effective in the city, and not inhabited for a greater number of occupants than that for which it was designed, may be permitted for a temporary period of time as herein provided under permits issued by the Council and properly secured hereunder and upon compliance with plumbing, electrical, sanitary, health, and zoning ordinances and regulations effective in the city, and then only when parked upon an appropriate cement pad which pad shall be the size of the trailer parked thereon, shall not be nearer than 20 feet to any other trailer or building and shall not be nearer than five feet to any road, alley, or property line.

(b) *Procedure.* Every person seeking a permit pursuant to subsection (a) of this section, or renewal thereof, hereunder shall make an application therefor, in writing, at the office of the City Clerk upon a form provided. The permit applicant shall provide written statement, signed by the applicant, that all property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted. It shall state the name and address of the applicant and a description of the property upon which the permit is desired. Each such

application shall be filed with the City Clerk not less than ten days before said trailer is ready for occupancy, and shall be accompanied by an inspection fee as established by the city. No permit shall be issued pursuant to this chapter except upon approval of the Council.

(Code 1987, §§ 315.15, 315.20; Ord. No. 105-2000, 2-5-2000; Ord. No. 01-2001, 2-25-2001)

Sec. 125-32. Investigation required before issuance; fee.

Upon filing of an application accompanied by the inspection fee, it shall be the duty of the city health officer, or his authorized representative, to investigate the premises and determine whether such trailer and land upon which it is proposed to be used, conform to the requirements of this chapter and of the rules and regulations of the health officer and the laws of the state. No permit shall be issued for a period in excess of one year.

(Code 1987, § 315.25)

Sec. 125-33. Revocation and inspection.

Upon the notice and hearing, the Council is authorized to revoke any permit issued pursuant to the terms of this chapter if, after due investigation, it determines that the holder thereof has violated any of the provisions of this chapter, or that any trailer is being maintained in an unsanitary or unsafe manner or is a nuisance.

(Code 1987, § 315.30)

Chapter 129

ZONING*

***State law reference—**Zoning generally, Minn. Stats. § 462.357.

ARTICLE I. IN GENERAL

Sec. 129-1. Intent and purpose.

This chapter is adopted for the purpose of:

(1) Protecting the public health, safety, morals, comfort, convenience and general welfare.

(2) Promoting orderly development of the residential, commercial, industrial, recreational, and public areas.

(3) Conserving the natural and scenic beauty and attractiveness of the city.

(4) Conserving and developing natural resources.

(5) Providing for the compatibility of different land uses and the most appropriate use of land throughout the city.

(Code 1987, § 350.205; Ord. No. 61-1993, § 350.205, 2-23-1994)

Sec. 129-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building means and shall be considered to be an integral part of the principal structure unless it is five feet or more from the principal structure or use and providing that the structure exceeds 120 square feet. The term "accessory shed," as defined in this section, shall not be classified as an accessory building.

Accessory outdoor retail uses means exterior retail sales that shall be enclosed by walls, fencing or other suitable material. Such uses shall be an accessory to the principal retail structure and shall not exceed 20 percent of the floor area of the principal structure.

Accessory shed means a one-story detached accessory structure, used as a tool and storage shed, playhouse, and similar use, provided the floor area does not exceed 120 square feet.

Alley means a public right-of-way which affords a secondary means of access to abutting property. The term "alley" does not include fire lanes.

Automobile repair, major, means the general repair, rebuilding, or reconditioning of engines, motor vehicles or trailer, including bodywork, framework, and major painting service.

Automobile repair, minor, means the replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine, transmission or differential; incidental bodywork and fender work, minor painting and upholstering service when said service stated in this definition is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

Basement means a portion of a building located partly underground but having half or more of its floor-to-ceiling height below the average grade of the adjoining ground.

Blight means a deteriorated condition, something that impairs or destroys.

Bluff means topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

(1) Part or all of the feature is located in a shoreland area;

(2) The slope rises at least 25 feet above the ordinary high-water level of the water body;

(3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high-water level averages 30 percent or greater; and

(4) The slope must drain toward the water body.

An area with an average slope of less than 18 percent over a distance of 50 feet or more shall not be considered part of a bluff.

Bluff impact zone means an area including a bluff and land located within 20 feet from the top of the bluff.

Bluff line means a line along the top of a slope connecting the points at which the slope becomes less than 12 percent. This applies to those slopes within the land use districts which are beyond the setback provisions from the ordinary high-water mark.

Brewery means a facility that produces for sale beer, ale, malt liquor, or other beverages made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

Brewpub means a brewery that operates a restaurant on the same premises as the brewery, whose malt liquor production per calendar year may be limited by Minnesota Statutes.

Boardinghouse, roominghouse or lodginghouse means a building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals or lodgings are provided for three or more persons, but not to exceed 20 persons.

Building means any structure having a roof which may provide shelter or enclosure for persons, animals, chattel, or property of any kind.

Building height means the vertical distance to be measured from the average grade of a building line to the top, to the cornice of a flat roof, to the deck line of a mansard roof, to a point on the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch type roof, to the mean distance of the highest gable on a pitched or hip roof.

Building line means a line parallel to the street right-of-way or the ordinary high-water level at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right-of-way line or ordinary high-water level.

Building setback means the minimum horizontal distance between the building foundation wall and a lot line.

Business means any occupation, employment, or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

Camping trailer means a folding structure, mounted on wheels and designed for travel, recreation, and vacation uses, also commonly called a pop-up camper.

Carport means an automobile shelter having one or more sides open.

Carwash, automatic conveyor, means a carwash where the car is attached to a conveyor and proceeds through the line.

Carwash, automatic drive-through, means a carwash where the person drives the car through the wash and machines clean the car.

Carwash, coin-operated self-service, means a carwash where a person washes the car themselves after depositing a coin in a machine for the use of water.

Church means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Clearcutting means the removal of an entire stand of vegetation.

Clustering or *cluster housing* means the development of a pattern or technique whereby structures are arranged in closely related groups to make the most efficient use of the natural amenities of the land.

Cocktail room means an area for the on-sale consumption of premium, distilled spirits produced on the premises of a micro distillery and in common ownership to the producer of the distilled spirits.

Commercial recreation means recreational facilities such as bowling alleys, tennis courts, racetracks, etc., constructed and operated for profit, by private enterprise.

Commercial use means the principal use of land or buildings for the sale, lease, rental or trade of products, goods and services.

Commissioner means the commissioner of the department of natural resources.

Common residential appurtenances means play apparatus such as swing sets and slides, sandboxes, picnic tables, barbecue stands, and similar equipment or structures but not including tree houses, swimming pools, play houses exceeding 25 square feet of floor area, or sheds utilized for storage of equipment. For the purpose of this subsection and other subsections or chapters contained in the City Code, a Common residential appurtenance(s) may also be referred to as “recreational equipment”.

Community residential facility means a state licensed group home or foster home serving mentally retarded or physically handicapped persons.

Comprehensive plan or policies means a compilation of goals, policy statements, standards, programs, and maps for guiding the physical, social, and economic development, both public and private, of the city and its environs, as defined in the Metropolitan Land Planning Act and includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

Conditional use means a use under this Code requiring the approval and issuance of a conditional use permit.

Condominium means a form of individual ownership with a multifamily and/or commercial building with joint responsibility for maintenance and repairs. In a condominium, each apartment, townhouse or business unit is owned outright by its occupant, and each occupant owns a share of the land and other common property of the building.

Consignment shops means small scale retail shops selling goods on consignment. Goods shall be limited to crafts, clothing, soft goods, accessories, and/or similar related goods.

Cooperative means a multiunit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the enterprise.

County board means the county board of commissioners.

Curb level means the grade elevation established by the governing body of the curb in front of the center of the building. Where no curb level has been established, the engineering staff shall determine a curb level or its equivalent for the purpose of this chapter.

Day care facility, adult (adult day care, adult day services, and family adult day services) mean a program operating less than 24 hours per day that provides functionally impaired adults with an individualized and coordinated set of services including health services, social services, and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care. The term "adult day care," "adult day services," and "family adult day services" do not include programs where adults gather or congregate primarily for purposes of socialization, education, supervision, caregiver respite, religious expression, exercise, or nutritious meals.

Day care facility, child, means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. The term "child day care facility" includes commercial and home based day care.

Deck means a platform supported by an open system of posts, beams and other structural elements.

Drive-in means any use where products and/or services are provided to the customer under conditions where the customer does not have to leave the car or where fast service to the automobile occupants is a service offered regardless of whether service is also provided with a building.

Dwelling, attached, means a dwelling that is joined to another dwelling at one or more sides by a party wall.

Dwelling, detached, means a dwelling that is entirely surrounded by open space on the same lot.

Dwelling, multiple-family, means a building designed exclusively for or occupied exclusively by three or more families living independently of each other.

Dwelling, single-family, means a building designed exclusively for and occupied exclusively by one family.

Dwelling, townhouse, means a building designed exclusively for or occupied exclusively for between three and six families living independently of each other. Each dwelling unit is attached horizontally in a linear arrangement with private front and rear entrances. Each dwelling unit must be separated from other dwelling units by a firewall extending from foundation through the roof with no openings. Each dwelling unit shall have a totally exposed front and rear wall to be used for entry, light, and ventilation.

Dwelling, twin home, means a building designed exclusively for or occupied exclusively by no more than two families living independently of each other with each unit located on a separate, single parcel of record, with the party wall separating the units acting as a dividing lot line.

Dwelling, two-family, means a building designed exclusively for or occupied exclusively by no more than two families living independently of each other with both units located on a single parcel of record.

Dwelling unit means a residential building or portion thereof intended for occupancy by a single family but not including hotels, motels, boardinghouses or roominghouses or tourist homes.

Easement means a grant by a property owner for the use of a strip of land by the public or any person for any specific purpose.

Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term "essential service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.

Essential services means overhead or underground electric, gas, communication, steam or water transmission or distribution systems and structures, by public utilities or governmental departments or commissions or as are required for protection of the public health, safety, or general welfare, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police callboxes, and accessories in connection therewith, but not including buildings.

Expansion or enlargement of a nonconforming structure means any increase in a dimension, size, area, volume or height.

Expansion, enlargement or intensification of a nonconforming use means any increase in the area of a nonconforming use including any placement of such a use in a structure or part thereof where the use or the structure did not exist before, any improvement that would allow the land to be more intensely developed for the nonconforming use, any move of a nonconforming use to a new location on the property, or any increase in intensity of the nonconforming use based on a review of the original nature, function or purpose of the nonconforming use, the hours of operation, traffic, parking, noise, exterior

storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the City.

Expansion permit means a permit that is granted by the City for the expansion or enlargement of a nonconforming structure in accordance with Section 129-35 and 129-40.

Exterior storage (includes open storage) means the storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

Exterior storage or outdoor storage means the keeping of materials or equipment on a parcel of land, outside of a principal dwelling or accessory structure, for the purpose of transporting, using, or employing such materials or equipment at a future date at another location, either on- or off-site. The keeping of motorized vehicles or watercraft for more than 24 hours, other equipment that is not capable of self-powered movement including, but not limited to recreational vehicles, watercraft trailers, ice shelters, or other similar items, or materials covered by a tarp or other similar screening devices, shall be included in this definition.

Family means one or two persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four or less persons living in such housekeeping unit shall be considered a separate family for the purpose of this chapter.

Fence means any partition structure, wall or gate erected as a dividing marker, barrier or enclosure and located along the boundary, or within the required yard.

Fire lane means a portion of a platted or dedicated public right-of-way extending to Lake Minnetonka, Dutch Lake or Lake Langdon from an intersecting platted or dedicated public right-of-way.

Fitness/Health Studio means a business under 10,000 square feet in size with equipment, facilities, and classes for exercising and improving physical fitness and health.

Floor area means the sum of the gross horizontal areas of the several floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space and including any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, the term "floor area" shall not include the basement floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices.

Floor area ratio means the numerical value obtained through dividing the gross floor area of a building by the net area of the lot or parcel of land on which such building is located.

Floor plan, general, means a graphic representation of the anticipated utilization of the floor area within a building or structure but not necessarily as detailed as a construction plan.

Forest land conversion means clearcutting of forested lands to prepare for a new land use other than the reestablishment of a subsequent forest stand.

Frontage means that boundary of a lot which abuts an existing or dedicated public street.

Gardening and Horticulture Uses means the keeping of a garden for the cultivation, propagation, and processing of plants, flowers, vegetables, herbs, and fruits for household use only. The keeping of any of the various species of farm animals or farm poultry, such as, but not limited to, horses, cattle, mules, donkeys, goats, sheep, llamas, alpacas, potbellied pigs, pigs, bees, chickens, ducks, geese, turkeys, peacocks, pigeons, swans, and doves is not a gardening or horticulture use. See Chapter 14.

Garage, private, means an accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles of the families resident upon the premises.

Governing body means the City Council.

Group home, residential, means a building or structure where persons reside for purposes of rehabilitation, treatment, or special care, and which is not a community residential facility as defined

herein. Such persons may be orphaned, suffer chemical or emotional impairment, or suffer social maladjustment or dependency.

Highway means any public thoroughfare or vehicular right-of-way with a federal or state numerical route designations; any public thoroughfare or vehicular right-of-way with a county numerical route designation.

Home occupations means home occupations which shall be defined to mean any occupation or profession of a service character which is clearly secondary to the main use of the structure as a single-family private dwelling and does not change the character thereof. Any activity resulting in noise, fumes, traffic, light or odor to such an extent that it is noticeable that the property is being used for nonresidential purposes shall not constitute a home occupation. The use shall be confined to one room within the principal structure; shall be engaged in only by persons residing in the dwelling; and shall not have special parking, lighting, advertising, or other facilities which would indicate its use for purposes other than as a single-family private dwelling.

Hotel means a building that provides a common entrance, lobby, halls and stairway and in which 20 or more people are, for compensation lodged with or without meals.

Ice shelter means a fish house, ice house, dark house, or other similar portable structure, used on the ice of state waters, designed to provide shelter while taking fish by angling or spearing, constructed with any variety of materials, with or without framing or running gear.

Impervious cover means any surface impervious or resistant to the free flow of water or surface moisture. The term "impervious cover" shall include, but not be limited to, all driveways and parking areas whether paved or not, tennis courts, sidewalks, patios and swimming pools. Open decks (one-quarter-inch minimum opening between boards) shall not be counted in impervious cover calculations.

Improved public street means a public right-of-way or private right-of-way approved pursuant to the requirements of the city, containing a bituminous or concrete surfaced roadway.

Industrial use means the use of land or buildings for the production, manufacture, warehousing, storage or transfer of goods, products, commodities, or other wholesale items.

Intensive vegetation clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row or block.

Junk or derelict means any cast-off, damaged, discarded, junked, obsolete, salvage, scrapped, unusable, worn-out, or wrecked object, thing, or material composed in whole or in part of asphalt, brick, carbon, cement, plastic, or other synthetic substance, fiber, glass, metal, paper, plaster, plaster of Paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter, or other substance, regardless of perceived market value requiring reconditioning in order to be used for its original purpose. Junk vehicles, junk trailers, or junk watercraft, shall be included in this definition.

Kennel, animal, means any place where more than three of any single type of domestic animal, over six months of age, is owned, boarded, bred, or offered for sale, but not including livestock in relation to a farm.

Landscaping means planting such as trees, grass, and shrubs.

Local Government Buildings means the principal use of land or buildings involving the assembly or congregation of the general public in facilities that are owned and operated for local government purposes. Examples include but are not limited to city offices, public works, parks facilities, and public safety buildings. Local government buildings may also include other governmental uses, as well as facilities and space to accommodate semi-public, quasi-public, community-based uses and similar related organizations.

Lockbox means a structure accommodating the storage of boat and beach equipment, not exceeding 20 square feet in total floor area and four feet in height.

Lodgingroom means a room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms, without cooking facilities, each room that provides sleeping accommodations shall be counted as one lodgingroom.

Lot means a parcel of land, abutting on a public street or having legal access to a public street, being a lot designated in a recorded plat or a division, or being a parcel of record of sufficient size to provide the yards required by this chapter.

Lot, corner, means a lot situated at the junction of, and abutting on two or more intersecting streets, or a lot at the point of deflection in alignment of a continuous street, the interior angle of which does not exceed 135 degrees.

Lot, lakeshore, means a lot abutting public waters or abutting public lands abutting public waters with the exception of designated parks.

Lot, substandard, means a lot of record that does not meet the minimum lot area, structure setbacks or other dimensional standards of this chapter.

Lot, through, means a lot which has a pair of opposite lines abutting two substantially parallel streets, and which is not a corner lot. On a through lot, both street lines shall be front lines for applying this chapter.

Lot area, minimum, means the area of a lot in a horizontal plane bounded by the lot lines, but not including any area below the ordinary high-water level as determined by the city or department of natural resources. (The ordinary high-water level for major lakes in the city: Lake Minnetonka = 929.4; Dutch Lake = 939.2; Lake Langdon = 932.1.)

Lot depth means the mean horizontal distance between the front lot line and the rear lot line of a lot.

Lot line means the property line bounding a lot except that where any portion of a lot extends into the public street right-of-way, the lot line shall be deemed to be the boundary of said public right-of-way for the purpose of applying this chapter. This exception does not apply to any additional public street right-of-way obtained following the initial establishment of the street.

Lot line, front, means that boundary of a lot which abuts an existing or dedicated public street. In the case of a corner lot it shall be the shortest dimension on a public street or as otherwise designated by the Community Development Director based on the practical front yard of the property as determined by such factors as the existing or proposed building configuration of the property and taking into consideration the characteristics of the surrounding properties. If the dimensions of a corner lot are equal, the front line shall be designated by the owner and filed with the city. For purpose of this chapter, a lot shall have only one front setback.

Lot line, rear, means that boundary of a lot that is opposite the front lot line. If the rear line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line 20 feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

Lot line, side, means any boundary of a lot that is not a front lot line or a rear lot line.

Lot of record means part of a subdivision, the plat of which has been recorded in the office of the register of deeds or registrar of titles; or a parcel of land, the deed to which was recorded in the office of said register of deeds or registrar of titles, in accordance with subdivision regulations and zoning ordinances of the city in effect at the time of said conveyance.

Lot width means the maximum horizontal distance between the side lot lines of a lot measured at the setback line.

Membrane structure means a structure usually consisting of an aluminum, steel or plastic frame which is covered with a plastic, fabric, canvas or similar nonpermanent material and is used to provide for the storage of vehicles, boats, recreational vehicles or other personal property. The term "membrane structure" shall also apply to structures commonly known as hoop houses, canopy-covered carports and tent garages and can be fully or partially covered but shall not apply to boat lifts and canopies which are placed in public waters.

Metes and bounds means a method of property description by means of their direction and distance from an easily identifiable point.

Microdistillery means a facility that produces for sale premium, distilled spirits as defined by Minnesota Statutes 340A.101.

Motel means a building or group of detached, semidetached, or attached buildings containing guestrooms or dwellings, with garage or parking space conveniently located to each unit, and which is designed, used, or intended to be used primarily for the accommodation of automobile travelers.

Motor fuel station means a retail place of business engaged primarily in the sale of motor fuels, but also may be engaged in supplying goods and services generally associated with the operation and maintenance of motor vehicles. These may include sale of petroleum products, sale and servicing of tires, batteries, automotive accessories, and replacement of items, washing and lubrication services; and the performance of minor automotive maintenance and repair.

Motor fuel station, convenience store, means a store operated in conjunction with a motor fuel station for the purpose of offering for sale, goods not essential to the motoring public.

Motor home means a portable temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.

Motorized vehicle means every vehicle which is self-propelled including, but not limited to automobiles, pick-up trucks, vans, all-terrain vehicles (ATV), utility terrain vehicles (UTV), motorcycles, mopeds, scooters, off-highway vehicles (OHV), snowmobiles, golf cart, neighborhood electric vehicle, or other similar equipment. Motorized vehicle does not include an electric personal assistive mobility device, motor home, or vehicle moved solely by human power (such as a bicycle).

Nonconformity means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized. The term "nonconformity" shall also include parcels or structures that have received variances.

Nonconforming use means an activity using land, buildings and/or structures for a purpose that is not currently allowed as a use in the zoning district in which it is located. The term also includes the use of a property which is eligible for a conditional use permit, for which none has been granted.

Nonconforming structure means a nonconformity other than a nonconforming use that does not currently conform to an ordinance standard such as height, setback or size; and includes a structure which is permitted as the result of a variance.

Nursery, landscape, means a business growing and selling trees, flowering and decorative plants and shrubs and which may be conducted within a building or without, for the purpose of landscape construction.

Nursing home means a building with facilities for the care of children, the aged, infirm, or place of rest for those suffering bodily disorder. Said nursing home shall be licensed by the state board of health as provided for in Minn. Stats. § 144.50.

Obstruction means any dam, wall, wharf, embankment, levee, dike pile, abutment, projection, excavation, channel rectification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

Off-street loading space means a space accessible from a street, alley or driveway for the use of trucks or other vehicles while loading or unloading merchandise or materials. Such space shall be of size as to accommodate one vehicle of the type typically used in the particular business.

Open sales lot (exterior storage) means any land used or occupied for the purpose of buying and selling goods, materials, or merchandise and for the storing of same under the open sky prior to sale.

Ordinary high-water level (OHWL) means a level delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high-water level is commonly that point where the natural vegetation changes from predominantly aquatic to predominately terrestrial. In areas where the ordinary high-water level is not evident, setbacks shall be measured from the stream bank of the following water bodies that have permanent flow or open water: the main channel, adjoining side channels, backwaters and sloughs. The ordinary high-water level for the lakes located in the city are as follows:

(1) The Lake Minnetonka ordinary high-water level is 929.4 feet;

(2) The Langdon Lake ordinary high-water level is 932.1 feet; and

(3) The Dutch Lake ordinary high-water level is 939.2 feet.

Parking space means a suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one standard automobile.

Pedestrianway means a public or private right-of-way across or within a block, to be used by pedestrians.

Performance standard means criterion established to control noise, odor, toxic or noxious matter, vibration, fire or explosive hazards, or glare or heat generated by or inherent in the use of land or buildings.

Pick-up camper means a structure designed to be mounted on a truck chassis or bed, for use as a temporary dwelling for travel, recreation, and vacation. May also be commonly be referred to as a camper shell, truck cap, truck topper, or tonneau cover.

Practical Difficulties, as used in conjunction with a variance, means that:

(i) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

(ii) The plight of the landowner is due to circumstance unique to the property including unusual lot size or shape, topography or other circumstances not created by the landowner; and

(iii) The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

Principal structure or use means one which determines the predominant use as contrasted to the accessory use of a structure.

Private schools means schools having a course of instruction approved by the state board of education for students enrolled in grades K-12 or any portion thereof; provided they do not include boarding or residential facilities.

Property line means the legal boundaries of a parcel of property which may also coincide with a right-of-way line of a road, cart way, and the like.

Protective covenant means a contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

Public land means land owned or operated by municipal, school district, county, state or other governmental units.

Public waters means waters as defined in Minn. Stats. § 103G.005, subd. 15, as amended. Lakes, ponds or flowage of less than ten acres shall not be considered public waters.

Recreation, public, means and includes all uses such as tennis courts, ball fields, picnic areas, and the like that are commonly provided for the public at parks, playgrounds, community centers, and other sites owned and operated by a unit of government for the purpose of providing recreation.

Recreational vehicle means a: camping trailer, motor home, pick-up camper, or travel trailer.

Registered land survey means a survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract of a registered land survey number. See Minn. Stats. § 508.47.

Regulatory flood protection elevation means an elevation no lower than two feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from a change in the designation of a floodway. The regulatory flood protection elevation for each lake is as follows:

(1) The Lake Minnetonka regulatory flood protection elevation is 933.0 feet;

(2) The Dutch Lake regulatory flood protection elevation is 942.0 feet; and

(3) The Lake Langdon regulatory flood protection elevation is 937.0 feet.

Restaurants.

(1) *Class I traditional restaurant* means where food is served and consumed by customers while seated at a counter or table. A cafeteria is where food is selected by customers while going through a serving line and taken to a table for consumption.

(2) *Class II fast food, convenience and drive-in* means restaurants where a majority of customers order and are served their food at a counter in packages prepared to leave the premises; or able to be taken to a table, counter, or automobile, or off the premises to be consumed; or a drive-in where most customers consume their food in an automobile regardless of how it is served.

(3) *Class III liquor service restaurants* means restaurants where food, 3.2 malt liquor, wine and intoxicating liquors are served and consumed by customers while seated at a counter or table and/or restaurants which contain entertainment, either live or prerecorded.

Retail business means stores and shops selling retail goods directly to the general public and includes shops and stores purchasing such goods directly from the general public for resale.

Road means a public right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place or however otherwise designated. Ingress and egress easements shall not be considered roads.

Selective cutting means the removal of single scattered trees.

Semipublic use means the principal use of land or buildings involving the assembly or congregation of the general public in facilities that are owned either privately or by institutions. Such uses include churches, fraternal organizations, museums, etc.

Service shops means consumer oriented retail businesses offering repair and maintenance services for normal household goods and commodities. Service shops shall include, but not be limited to, tailors, shoe repair, and repair of small appliances, lawn and garden equipment, and tools.

Shore impact zone means land located between the ordinary high-water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

Shoreland means land located within 1,000 feet of the ordinary high-water level of a lake, pond or flowage. The limits of shoreland may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the state department of natural resources.

Shoreland setback means the minimum horizontal distance between a structure and the ordinary high-water level.

Significant historic site means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minn. Stats. § 307.08. A historic site meets these criteria if it is presently listed on either register or it is determined to meet the qualifications for listing after review by the state archaeologist or the director of the state historical society. All unplatted cemeteries are automatically considered significant historic sites.

Special mobile equipment means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to, ditch digging equipment, moving dollies, pump hoists, and other well-drilling equipment, street sweeping vehicles, and other machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, and earth-moving equipment.

Steep slope means lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

Story means that portion of a building included between the surface of any floor and the surface of the floor next above, the space between the floor and the ceiling next above.

Street means a public right-of-way which affords primary means of access to abutting property, and shall also include avenues, highways, roads, or ways.

Street, collector, means a street that serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major road.

Street, local, means a street intended to serve primarily as an access to abutting properties.

Street, major or thoroughfare, means a street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

Street pavement means the wearing or exposed surface of the roadway used by vehicular traffic.

Street width means the width of right-of-way, measured at right angles to the centerline of the street.

Structural alteration means any change, other than incidental repairs, which would affect the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

Structure means anything constructed or erected, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground, except the following:

(1) On-grade stairways and steps not exceeding six feet in width and landings connected to such stairways or steps not exceeding six feet in width and six feet in length;

(2) Boardwalks not exceeding six feet in width;

(3) Driveways not exceeding 24 feet in width; and

(4) Sidewalks not exceeding six feet in width.

Subdivision means the dividing of any parcel of land into two or more parcels.

Surface water-oriented commercial use means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Examples include marinas and restaurants with transient docking facilities.

Taproom means an area for the on-sale consumption of malt liquor produced by the brewer for consumption on the premises or on an adjacent property owned by the same property owner as the brewery. A taproom may also include sale for off-premises consumption of malt liquor produced at the brewery for off-premises consumption, packaged subject to Minnesota Statute 340A.285 or its successor.

Toe of the bluff means the lower point of a 50-foot segment of a bluff with an average slope exceeding 18 percent.

Top of the bluff means the higher point of a 50-foot segment of a bluff with an average slope exceeding 18 percent.

Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation, and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer.

Unique as used in conjunction with the granting of a variance means that the circumstances on which the request for a variance is based are not common or unusual in properties having the same zoning.

Use means the purpose or activity for which the land or building thereon is designated, arranged or intended, or for which it is occupied, utilized or maintained.

Use, accessory, means a use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

Use, permitted, means a public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

Use, principal, means the main use of land or buildings as distinguished from subordinate or accessory uses. A principal use may be either permitted or conditional.

Utility trailer means any enclosed or unenclosed non-motorized vehicle other than a watercraft trailer, designed for carrying snowmobiles, motorcycles, all terrain vehicles, off-road vehicles, property or materials on its own structure and for being drawn by a motor vehicle. The term does not include a trailer drawn by a truck-tractor semitrailer combination or an auxiliary axle on a motor vehicle, which carries a portion of the weight of the motor vehicle for which it is attached.

Variance means a modification or variation of the provisions of this chapter where it is determined that by reason of special and unusual circumstances unique to the individual property under consideration, strict application of the chapter would cause an undue or unnecessary hardship, or that strict conformity with the provisions of this chapter would be unreasonable, and granting a variance would be in keeping *with the spirit and intent of the chapter.*

Watercraft means and includes boats, canoes, paddleboards, personal watercraft (PWC), and other similar recreational equipment designed to be used in or on a body of water.

Water-oriented accessory structure or facility means an at-grade deck or lockbox that reasonably needs to be located closer to public waters than the normal structure setback. Stairways, fences, docks and retaining walls are not considered water-oriented accessory structures or facilities.

Watercraft trailer means any non-motorized vehicle, designed for carrying watercraft on its own structure and for being drawn by a motorized vehicle.

Yard means a required open space on a lot which is unoccupied and unobstructed by a structure from its lowest level to the sky except as permitted in this chapter. The yard extends along the lot line at right angles to such lot line to a depth or width specified in the setback regulations for the zoning district in which such lot is located.

Yard, front, means a yard extending along the full width of the front lot line, between side lot lines and extending from the abutting street right-of-way line to a depth required in the setback regulations for the zoning district in which such lot is located.

Yard, rear, means the portion of the yard on the same lot with the principal building located between the rear line of the building and the rear lot line and extending for the full width of the lot.

Yard, side, means the yard extending along the side lot line between the front and rear yards to a depth or width required by setback regulations for the zoning district in which such lot is located.

Zoning amendment means a change authorized by the city either in the allowed use within a district or in the boundaries of a district.

Zoning district means an area or areas within the limits of the city for which the regulations and requirements governing use are uniform.

(Code 1987, § 345.310; Ord. No. 8, 9-21-1987; Ord. No. 41-1990, 3-26-1990; Ord. No. 61-1993, § 350.310, 2-23-1994; Ord. No. 69-1994, 8-29-1994; Ord. No. 09-2001, 9-23-2001; Ord. No. 14-2002, 7-7-2002; Ord. No. 12-2003, 12-7-2003; Ord. No. 02-2004, 6-6-2005; Ord. No. 15-2005, 9-4-2005; Ord. No. 06-2007, 5-8-2007; Ord. No. 07-2008, 5-13-2008; Ord. 11-2008, 5-25-08; Ord. No. 06-2010, 10-24-10; Ord. No. 10-2010, 12-5-2010; Ord. No. 03-2011, 10-23-2011; Ord. No. 04-2011, 11-6-2011; Ord. 01-2012, 3-25-2012; Ord. No. 01-2013, 2-10-13; Ord. No. 01-2014, 1-26-14; Ord. No. 11-2014, 12-14-2014; Ord. No. 1-2016, 2-7-2016; Ord. No. 10-2016, 9-4-2016; 01-2017, 2-5-2017)

Sec. 129-3. Rules.

(a) The language set forth in the text of this chapter shall be interpreted in accordance with the rules of construction in this section.

(b) All measured distances expressed in feet shall be to the nearest tenth of a foot. In the event of conflicting provisions, the more restrictive provision shall apply.

(Code 1987, § 350.305; Ord. No. 61-1993, § 350.305, 2-23-1994)

Sec. 129-4. Supremacy.

(a) When any condition imposed by any provision of this chapter on the use of land or buildings or on the bulk of buildings is either more restrictive or less restrictive than similar conditions imposed by any provision of any other county or state chapter, regulation, or statute, the more restrictive conditions shall prevail.

(b) This chapter is not intended to abrogate any easements, restrictions, or covenants relating to the use of land or imposed on lands within the county by private declaration or agreement, but where the provisions of this chapter are more restrictive than any such easement, restriction, or covenant, or the provision of any private agreement, the provisions of this chapter shall prevail.

(Code 1987, § 350.905; Ord. No. 61-1993, § 350.905, 2-23-1994)

Sec. 129-5. Application of this chapter.

(a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

(b) Where the conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, chapter, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

(c) Except as in this chapter specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this chapter.

(Code 1987, § 350.405; Ord. No. 61-1993, § 350.405, 2-23-1994)

Sec. 129-6. Existing lots of record.

A lot of record in a residential district may be used for residential dwelling purposes provided:

(1) The area thereof meets all setback and minimum lot area requirements of this chapter. In the shoreland management area, all single-family detached lots shall have a minimum lot area of 6,000 square feet in the R-1A and R-2 districts and 10,000 square feet in the R-1 district, while all two-family and twin homes in the R-2 district shall be located on lots having a minimum area of 14,000 square feet.

(2) It has frontage on an improved public right-of-way.

(3) It was under separate ownership from abutting lands upon or prior to the effective date of the ordinance from which this chapter is derived.

(Code 1987, § 350.415; Ord. No. 61-1993, § 350.415, 2-23-1994; Ord. No. 19-2006, 10-29-2006; Ord. No. 03-2007, 2-13-2007)

Secs. 129-7—129-30. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 129-31. Administration of chapter.

The Community Development Director shall be responsible for the administration and enforcement of this chapter, and the implementation and enforcement of the comprehensive plan. The Community Development Director shall create and maintain such systems of records and files and establish such administrative procedures as are necessary to promote the efficient administration and enforcement of this chapter and the comprehensive plan. The Community Development Director may designate additional persons as may be necessary or convenient to administer and enforce this chapter. Any person aggrieved by any procedure or decision of the Community Development Director may appeal to the board of adjustments and appeals. In addition to the foregoing, the Community Development Director or individuals acting on that person's direction shall have the following responsibilities:

(1) Issue occupancy, building and other permits, and make and maintain records thereof.

(2) Conduct inspections of buildings and use of land to determine compliance with the terms of this chapter.

(3) Maintain permanent and current records of this chapter, including, but not limited to:

a. All maps;

b. Amendments;

c. Conditional uses;

d. Variances;

e. Appeals; and

f. Applications therefore.

(4) Receive, file, and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies.

(5) Institute in the name of the city, any appropriate actions or proceedings against a violator as provided for.

(Code 1987, § 350.505; Ord. No. 61-1993, § 350.505, 2-23-1994)

Sec. 129-32. Appeals to the board of adjustment and appeals.

(a) The board of appeals and adjustments shall be the City Council. The Planning Commission shall hear and advise the City Council of its findings and determinations.

(b) The board of adjustment and appeals shall act upon all questions as they may arise in the administration of this chapter, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing the chapter. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state.

(c) The conditions for the issuance of a variance are as indicated in section 129-39. No use variances (a use different from that permitted in the district) shall be issued by the board of adjustment and appeals.

(d) Hearings of the board of adjustment and appeals shall be held within such time and upon such notice to interested parties as is provided in its adopted rules for the transaction of its business. The board shall, within a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. Any party may appear at the hearing in person or by agent or attorney.

(e) The board of adjustment and appeals may reverse or affirm wholly or partly or modify the order, requirement, decision, or determination as in its opinion ought to be made to the premises and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. The reasons for the board's decision shall be stated.

(Code 1987, § 350.510; Ord. No. 61-1993, § 350.510, 2-23-1994)

Sec. 129-33. Planning Commission.

The Planning Commission established pursuant to chapter 2, article VIII shall provide assistance to the City Council in the administration of this chapter and at the direction of the City Council shall review, hold public hearings, and make recommendations to the City Council on all applications for zoning amendments and conditional use permits using the criteria in sections 129-34 and 129-38.

(Code 1987, § 350.515; Ord. No. 61-1993, § 350.515, 2-23-1994)

Sec. 129-34. Zoning amendments.

(a) *Criteria.* The City Council may adopt amendments to the zoning chapter and zoning map in relation both to land uses within a particular district or to the location of the district lines. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies of the community as reflected in the plan or changes in conditions in the city.

(b) *Procedure.*

(1) An amendment to the text of this chapter or zoning map may be initiated by the City Council, the Planning Commission or by application of a property owner. Any amendment not initiated by the Planning Commission shall be referred to the Planning Commission for review. Individuals wishing to initiate an amendment to the zoning chapter shall fill out a zoning amendment application form and submit it to the planning staff.

(2) The property owner applying for a zoning amendment shall fill out and submit to the planning staff a rezoning application form. A site plan must be attached or drawn below at a scale large enough for clarity showing the following information:

a. The location and dimensions of:

1. The lot;
2. The building;
3. The driveways; and
4. Off-street parking.

b. The distance between:

1. The building and front lot lines;
2. The building and side lot lines;
3. The building and rear lot lines;
4. The principal building and accessory buildings;
5. The principal building and principal buildings on adjacent lots.

c. The location of signs, easements, underground utilities, etc.

d. Any additional information as may reasonably be required by the planning staff and applicable sections of this zoning chapter.

(3) The planning staff shall maintain records of amendments to the text and zoning map of the chapter. The City Council may not act until it has received the advice from the planner or 60 days has passed from referral.

(4) A public hearing on all rezoning shall be held by the City Council. Notice of said hearing shall be published in the official newspaper designed by the City Council at least ten days prior to the public hearing. The City Clerk shall mail the same notice to the owners of property located within 350 feet of the outer boundaries of the land proposed to be rezoned. The notice shall include the description of the land and the proposed changes in zoning. The Planning Commission must take action on the application within sixty days following referral. The person making the application shall be notified of the action taken. The Planning Commission shall make its report to the City Council at its next regular meeting following its action recommending approval, disapproval or modified approval of the proposed amendment. The City Council shall act within the time frame specified in Minn. Stats. § 15.99.

(5) No application of a property owner for an amendment to the text of the chapter or the zoning map shall be considered by the Planning Commission within the one-year period following a denial of such request, except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.

(Code 1987, § 350.520; Ord. No. 61-1993, § 350.520, 2-23-1994)

State law reference—Amendments generally, Minn. Stats. § 462.357, subd. 4; public hearings, Minn. Stats. § 462.357, subd. 3.

Sec. 129-35. Nonconforities.

(a) Nonconforming structures.

(1) Any structure lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and location existing upon such date, but may be expanded or intensified only in compliance with the provisions of this section.

(2) Nothing in this chapter shall prevent the repair, replacement, restoration, maintenance or improvement of a structure, unless such activities constitute an expansion or enlargement of the nonconformity.

(3) Whenever a nonconforming structure shall have been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, it may be reconstructed and used as before if it be reconstructed not later than 12 months after such calamity, unless the damage to the building or structure is 50 percent or more of its fair market value as shown on the assessor's records at the time of damage, in which case it may not be reconstructed unless a building permit has been applied for within 180 days after the date of damage, and construction is completed not more than one year after the date of damage.

(4) Nonconforming principal and accessory structures may be expanded, enlarged, or modified with conforming structures provided:

a. the use of the parcel is conforming to district regulations

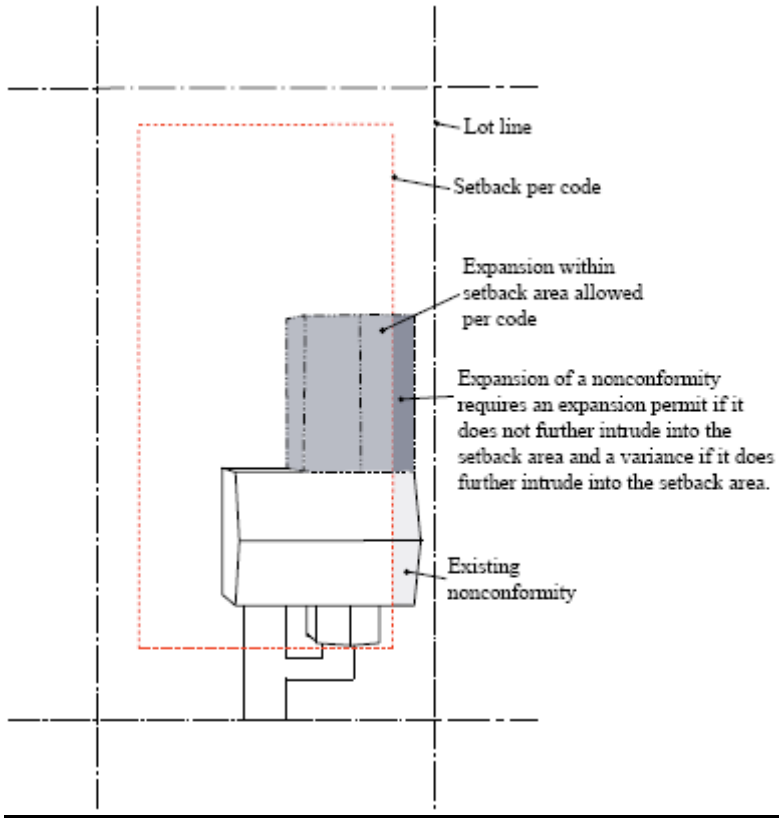
b. the proposed project meets the current zoning regulations

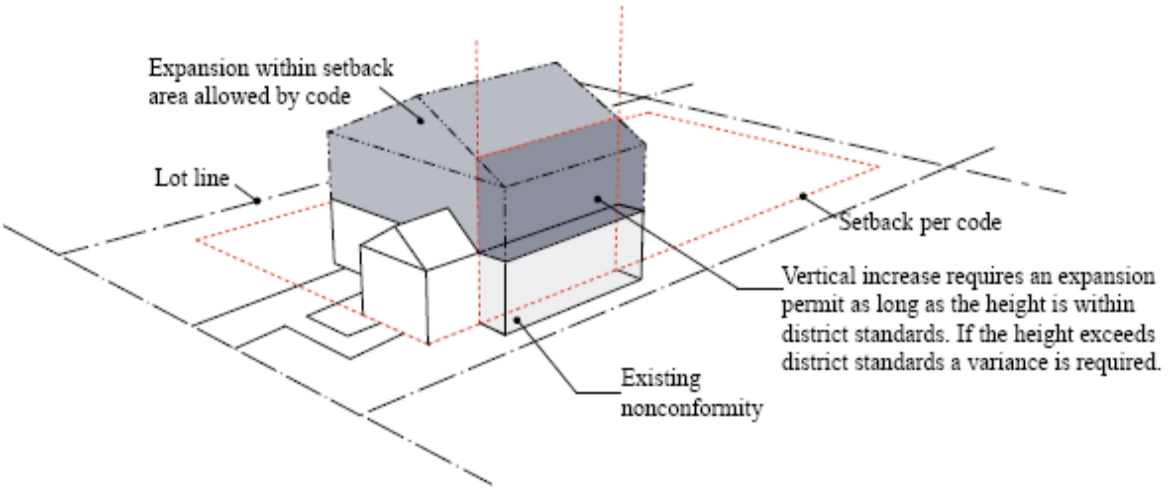
c. no other nonconformities are created.

(5) Nonconforming principal and accessory structures may be expanded or enlarged with nonconforming structures only if a variance or an expansion permit is granted.

a. a variance is required if the expansion or enlargement will further intrude (as measured at the point of greatest intrusion) into the required setback beyond the distance of the existing structure or the proposed new height/stories is greater than allowed by City Code. For example: (i) if the building currently has a setback of 15 feet when 20 feet is required and the proposed expansion will have a setback of 14 feet a variance will be needed; or (ii) if the nonconforming structure will not further intrude into any currently required setback but will be expanded to a height greater than is permitted by City Code a variance will be needed.

b. an expansion permit is required if the expansion or enlargement will not further intrude (as measured at the point of greatest intrusion) into the required setback beyond the distance of the existing structure or the proposed new height/stories is within City Code requirements. For example: (i) if the building currently has a setback of 15 feet when 20 feet is required and the proposed expansion will have a setback of 15 feet an expansion permit will be needed; (2) a second floor area is expanded into the nonconforming setback over an existing nonconforming first floor.





(b) Nonconforming uses.

(1) Any use lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and in a manner of operation existing upon such date, but may be expanded or intensified only in compliance with the provisions of this section. This paragraph shall not be deemed to prevent the expansion, enlargement or intensification of a nonconforming use if the use is allowed as a conditional use and the landowner obtains a expansion permit allowing such expansion, enlargement or intensification

(2) When any nonconforming use of any structure or land in any district has been changed to a conforming use, and has been so used for more than 12 months, it shall not thereafter revert to its prior nonconforming use.

(3) Whenever a nonconforming use of a structure or land is discontinued for a period of more than 12 months, any future use of said structure or land shall be in conformity with the provisions of this chapter.

(4) A nonconforming use of a structure or parcel of land may be changed to a similar nonconforming use or to a more restrictive nonconforming use (as determined by the City Council). Some nonconforming uses are permitted by conditional use permits. Once a structure or parcel of land has been placed in similar nonconforming use or in a more restrictive nonconforming use, and has been so used for a period of more than 12 months, it shall not return to the prior nonconforming use.

(5) With the approval of the City Council, alterations may be made to a building containing nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or result in the expansion, enlargement or intensification of the use.

(Code 1987, § 350.420; Ord. No. 61-1993, § 350.420, 2-23-1994; Ord. No. 103-1999, 8-9-1999; Ord. No. 02-2006, 2-5-2006; Ord. No. 06-2010, 10-24-2010)

State law reference—Nonconformities, Minn. Stats. § 462.357, subds. 1c, 1e.

Sec. 129-36. Change to be coordinated with adjacent districts.

Any zoning district change on land adjacent to or across a public right-of-way from an adjoining community shall be referred to the Planning Commission, and the adjacent community for review and comment prior to action by the City Council granting or denying the zoning district classification change.

A period of at least 30 days shall be provided for receipt of comments; such comments shall be considered as advisory only.

(Code 1987, § 350.425; Ord. No. 61-1993, § 350.425, 2-23-1994)

Sec. 129-37. Land use plan and map to be amended with change.

Any change in zoning granted by the City Council shall automatically amend the land use plan and the land use map in accordance with said zoning change.

(Code 1987, § 350.430; Ord. No. 61-1993, § 350.430, 2-23-1994)

Sec. 129-38. Conditional use permits.

(a) *Criteria.* A conditional use permit is required for conditional uses. In granting a conditional use permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals and general welfare of occupants of surrounding lands. Among other things, the City Council may make the following findings where applicable:

(1) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

(2) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

(3) Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.

(4) Adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.

(5) Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

(6) The use, in the opinion of the City Council, is reasonably related to the overall needs of the city and to the existing land use.

(7) The use is consistent with the purposes of this chapter and the purposes of the zoning district in which the applicant intends to locate the proposed use.

(8) The use is not in conflict with the policy plan of the city.

(9) The use will not cause traffic hazards or congestion.

(10) Existing adjacent uses will not be adversely affected because of curtailment of customer trade brought about by the intrusion of noise, glare or general unsightliness.

(11) The developer shall submit a time schedule for completion of the project.

(12) The developer shall provide proof of ownership of the property to the zoning officer.

(13) All property taxes, special assessments, municipal utility fees, including, but not limited to, water and sewer bills, and penalties and interest thereon have been paid for the property for which the permit has been submitted.

(b) *Additional conditions.* In permitting a new conditional use or the alteration of an existing conditional use, the City Council may impose, in addition to those standards and requirements expressly specified by this chapter, additional conditions which the City Council considers necessary to protect the

best interest of the surrounding area or the community as a whole. The conditions may include, but are not limited to, the following:

(1) Increasing the required lot size or yard dimension.

(2) Limiting the height, size or location of buildings.

(3) Controlling the location and number of vehicle access points.

(4) Increasing the street width.

(5) Increasing the number of required off-street parking spaces.

(6) Limiting the number, size, location or lighting of signs.

(7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.

(8) Designating sites for open space. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The planning staff shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the City Council; time limits, review dates, and such other information as may be appropriate.

(c) *Procedure.*

(1) The person applying for a conditional use permit shall fill out and submit to the planning staff a conditional use application form. A site plan must be attached at a scale large enough for clarity showing the following information:

a. Location and dimensions of:

1. Lot;

2. Building;

3. Driveways; and

4. Off-street parking spaces.

b. Distance between:

1. Building and front, side, and rear lot lines;

2. Principal building and accessory buildings;

3. Principal building and principal buildings on adjacent lots.

c. The location of signs, easements, underground utilities, etc.

d. Any additional information as may reasonably be required by the planning staff and applicable sections this chapter, including, but not limited to, the following:

1. Site plan drawn at scale dimensions with setbacks noted.

2. Location of all buildings, heights, and square footage.

3. Curb cuts, driveways, parking spaces.

4. Off-street loading areas.

5. Drainage plan.

6. Type of business, proposed number of employees by shift.

7. Proposed floor plan with use indicated and building elevations.

8. Sanitary sewer and water plan with estimated use per day.

9. A lighting plan showing the lighting of parking area, walks, security lighting and driveway entrance lights.

10. A landscape plan with a schedule of the plantings.

(2) The planning staff shall refer the application to the Planning Commission for review.

(3) The City Council shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the city at least ten days prior to the hearing. Notice of the hearing shall also be mailed to owners of property located within 350 feet of the outer boundaries of the land to which the conditional use will be applicable. The notice shall include a description of the land and the proposed conditional use.

(4) The report of the Planning Commission shall be placed on the agenda of the City Council at a regular meeting following referral from the Planning Commission.

(5) The City Council must take action on the application after receiving the report of the Planning Commission. If it grants the conditional use permit, the City Council may impose conditions (including time limits) it considers necessary to protect the public health, safety and welfare and such conditions may include a time limit for the use to exist or operate.

(6) An amended conditional use permit application shall be administered in a manner similar to that required for a new conditional use permit. Amended conditional use permits shall include requests for changes in conditions, and as otherwise described in this chapter.

(7) No application for a conditional use permit shall be resubmitted for a period of one year from the date of said order of denial.

(8) If a time limit or periodic review is included as a condition by which a conditional use permit is granted, the conditional use permit may be reviewed at a public hearing with notice of said hearing published at least ten days prior to the review; it shall be the responsibility of the planning staff to schedule such public hearings and the owner of land having a conditional use permit shall not be required to pay a fee for said review. A public hearing for annual review of a conditional use permit may be granted at the discretion of the City Council.

(9) In the event that the applicant violates any of the conditions set forth in this permit, the City Council shall have the authority to revoke the conditional use permit.

(10) Bond. For any required screening, landscaping or other improvements, the City Council may request that any applicant file with the clerk a bond or other financial guarantee in the amount of 1¼ times the engineer's estimate of the cost of the required improvement.

(11) After the approval of the conditional use permit, the applicant, owner or developer, before commencing any work or obtaining any building permits, may be required to make a minimum cash deposit in the amount established by the city. The Council may establish an amount above the minimum deposit at the time the permit is approved and this deposit shall be held in a special developer's escrow account and shall be credited to the said applicant, owner, or developer.

Engineering and legal expenses incurred by the city in plan approval, office and field checking, checking and setting grade and drainage requirements, general supervisions, staking, inspection, drafting as-built drawings and all other engineering services performed in the processing of said development, and all

administrative and legal expenses in examining title to the property and in reviewing or preparing all documents for the land being developed shall be charged to the aforementioned account and shall be credited to the city for the payment of these expenses. If at any time it appears that a deficit will occur in any developer's escrow account as determined by the city, said officials shall recommend to the Council that an additional deposit is required and the Council may require that the applicant, owner or developer shall deposit additional funds in the developer's escrow account. The city engineer and City Attorney shall itemize all services and materials billed to any developer's escrow account. The applicant, owner or developer making the deposits in the developer's escrow account shall, upon request, be furnished a copy of said itemized charges and any balance remaining in the account upon completing the project shall be returned to the depositor by the clerk after all claims and charges thereto have been paid.

(Code 1987, § 350.525; Ord. No. 61-1993, § 350.525, 2-23-1994; Ord. No. 105-2000, 2-5-2000)

State law reference—Conditional use permits. Minn. Stats. §§ 62.357, subd. 3, 462.3595.

Sec. 129-39. Variances.

(a) *Criteria.* A variance to the provisions of this chapter may be granted, but is not mandated, to provide relief to the landowner in those zones where this chapter imposes practical difficulties to the property owner in the use of the owner’s land. No use variances may be granted. A variance may be granted only in the event that the following circumstances exist:

(1) The variance proposed meets the criteria for Practical Difficulties as defined in City Code Sub. 129-2.

(2) Granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to owners of other lands, structures or buildings in the same district nor be materially detrimental to property within the same zone.

(3) The variance requested is the minimum variance which would alleviate the practical difficulty.

(4) A variance shall only be permitted when it is in harmony with the general purposes and intent of the zoning ordinance and when the terms of the variance are consistent with the comprehensive plan.

(b) *Procedure.*

(1) The person applying for a variance shall fill out and submit to the planning staff a variance request form. A site plan with a certificate of survey must be attached at a scale large enough for clarity showing the following information:

a. Location and dimensions of:

1. Lot;

2. Building;

3. Driveways; and

4. Off-street parking spaces.

b. Distance between:

1. Building and front, side, and rear lot lines;

2. Principal building and accessory buildings;

3. Principal building and principal buildings on adjacent lots.

c. The location of signs, easements, underground utilities, etc.

d. Any additional information as may be reasonably required by the planning staff and applicable sections of this zoning chapter.

(2) The planning staff shall refer the application to the Planning Commission for

review.

(3) The Planning Commission must take action on the application in accordance with the timelines established by statute for land use applications. If it recommends for the variance, it may also recommend conditions it considers necessary to protect public health, safety and welfare.

(4) Upon receiving the recommendation of the Planning Commission or within 60 days after referral of the application for a variance to the Planning Commission, if no recommendation has been transmitted, the Council may place the request on the agenda. The Council may grant variances only in situations where it determines that the applicant has satisfied the requirements of the City Code Sub. 129.39(a).

(5) Whenever a variance has been considered and denied by the City Council, a similar application and proposal for a variance shall not be considered again by the Planning Commission or City Council for at least one (1) year from the date of its denial, unless a decision to reconsider such matter is made by the City Council.

(c) The Council may impose any reasonable condition in the granting of such variances in order to insure compliance with this chapter, or to protect adjacent property. Any condition imposed must be directly related to and must bear rough proportionality to the impact created by the variance.

(Ord. No. 06-2010, 10-24-10; Ord. No. 03-2011, 10-23-2011)

Sec. 129-40. Expansion Permit.

(a) Classification of Expansion Permits.

(1) Minor Expansion Permit. An expansion permit shall be considered a minor expansion permit when the request is for any of the following:

i. A roof modification that increases the useable area within the same footprint without adding a full story to the structure;

ii. A basement excavation within the existing structure footprint;

iii. A one-story addition to an existing upper floor of a nonconforming structure that does not expand the footprint of the non-conforming structure and the one-story addition is less than 500 square feet in size; or

iv. A one-story addition to the footprint of an existing, nonconforming structure that is less than 250 square feet in area.

(2) Major Expansion Permit. An expansion permit shall be considered a major expansion permit unless specifically defined as a minor expansion permit in clause (a)(1) of this section.

(b) *Criteria.* A major or minor expansion permit for a nonconforming structure may be issued, but is not mandated, to provide relief to the landowner where this chapter imposes practical difficulties to the property owner in the reasonable use of the land. In determining whether practical difficulties exist, the applicant must demonstrate that the following criteria exist:

(1) the proposed expansion is a reasonable use of the property considering:

i. function and aesthetics of the expansion.

ii. absence of adverse off-site impacts such as from traffic, noise, odors and dust.

iii. adequacy of off-street parking.

(2) exceptional or extraordinary circumstances justifying the expansion are unique to the property and result from lot size or shape, topography, or other circumstances over which the owners of the property since enactment of this chapter have had no control.

(3) the exceptional or extraordinary circumstances do not result from the actions of the applicant.

(4) the expansion would not adversely affect or alter the essential character of the neighborhood.
(5) the expansion requested is the minimum needed.

(c) *Procedure.*

(1) The person applying for a major or minor expansion permit shall fill out and submit to the planning staff an expansion permit request form with fee as required by City Code Chapter 101. A site plan with a certificate of survey must be attached at a scale large enough for clarity showing the following information:
   i. Location and dimensions of:
      1. Lot;
      2. Building;
      3. Driveways; and
      4. Off-street parking spaces.
   ii. Distance between:
      1. Building and front, side, and rear lot lines;
      2. Principal building and accessory buildings;
      3. Principal building and principal buildings on adjacent lots.
   iii. The location of signs, easements, underground utilities, etc.
   iv. Any additional information as may be reasonably required by the planning staff and applicable sections of this zoning chapter.

(2) Minor Expansion Permit
   i. The planning staff will refer a minor expansion permit application to the Community Development Director for review. The Community Development Director shall grant or deny the application administratively and may impose administratively any reasonable conditions the Community Development Director deems necessary to protect the public health, safety and welfare and the essential character of the neighborhood, to insure compliance with this chapter, or to protect the adjacent property.
   ii. The Community Development Director may refer an application for a minor expansion permit to the Planning Commission and City Council, as if the application is for a major expansion permit, when the Community Development Director determines that the application requires additional review and consideration by the Planning Commission and City Council.
   iii. An applicant may appeal the determination of the Community Development Director in accordance with Section 129-32.

(3) Major Expansion Permit
   i. The planning staff shall refer a major expansion permit application to the Planning Commission for review. If it recommends approval of the major expansion permit, it may include conditions it considers necessary to protect the public health, safety and welfare and the essential character of the neighborhood.
   ii. Upon receiving the recommendation of the Planning Commission the Council may place the request on the agenda for formal review. If it grants a major expansion permit, the Council may impose any reasonable condition in order to insure compliance with this chapter, or to protect adjacent property. If no recommendation has been transmitted by the Planning Commission within 60 days of the date of the

application, the Council, at its discretion, may place the request on the agenda for review.

(d) *Term.* A major or minor expansion permit will automatically expire and be of no further force and effect if no building permit has been issued within one year of the date of approval of the major or minor expansion permit. The applicant may petition for an extension of time in which to have a building permit issued. Such extension shall be requested in writing and filed with the Building Official at least thirty (30) days before the expiration of the original major or minor expansion permit. It is the applicant's responsibility to monitor the expiration of the major or minor expansion permit. There shall be no charge for the filing of such petition. The request for extension shall state facts demonstrating a good faith attempt to complete the major or minor expansion as permitted in the expansion permit. Such petition shall be presented to the Planning Commission for a recommendation to the City Council for decision. Once the project is completed as approved, the major or minor expansion permit becomes perpetual subject to the limitations contained in Section 129-40 or in the major or minor expansion permit itself. The structure authorized by the major or minor expansion permit will be treated in all respects as a nonconforming structure.

(e) *Denial and Reconsideration.* Whenever a major or minor expansion permit has been considered and denied by the Community Development Director, a similar application and proposal for a major or minor expansion permit shall not be considered again by the City for at least one (1) year from the date of its denial, unless a decision to reconsider such matter is made by the City Council.

(f) *Specific project.* The major or minor expansion permit is only valid for the project for which it was granted. Construction of any project must be in substantial compliance with the building plans and specifications reviewed and approved by the City Council.

(g) *Recording*. A certified copy of the major or minor expansion permit must be filed by the applicant with the Hennepin County recorder or the Hennepin County registrar of titles. The major or minor expansion permit must contain a legal description of the property affected.

(Code 1987, § 350.530; Ord. No. 61-1993, § 350.530, 2-23-1994; Ord. No. 06-2010, 10-24-2010; Ord. No. 1-2016, 2-7-2016)

State law reference—Variances, Minn. Stats. § 462.357, subd. 6(2).

Secs. 129-41—129-66. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 129-67. Zoning districts.

For the purpose of this chapter, the city is hereby divided into the following use districts:

R-1	Single-family residential district
R-1A	Single-family residential district
R-2	Two-family residential district
R-3	Multiple-family residential district
B-1	Central business district
B-2	General business district
B-3	Neighborhood business district
PED-PUD	Pedestrian planned unit development district

DEST-PUD	Destination planned unit development district
L-PUD	Linear planned unit development district
I-1	Light industrial district
CON	Conservation district

(Code 1987, § 350.605; Ord. No. 61-1993, § 350.605, 2-23-1994)

Sec. 129-68. Zoning map.

The zoning map of the city is hereby adopted by reference. The boundaries of the districts are hereby established as shown on said map. A revised, updated copy of said map shall be kept on file in the office of the City Manager, or Manager's designate for reference as the official zoning map.

(Code 1987, § 350.610; Ord. No. 61-1993, § 350.610, 2-23-1994. Ord. No. 03-2010, 6/20/10; Ord. No. 14-2010, 1-2-2011;)

Sec. 129-69. District boundaries.

District boundary lines as indicated on the zoning map follow lot lines, the centerline of streets, the centerlines of streets projected, the centerline of railroad right-of-way, the center of watercourses or the corporate limits lines, as they exist, upon the effective date of the ordinance from which this chapter is derived.

(Code 1987, § 350.615; Ord. No. 61-1993, § 350.615, 2-23-1994)

Sec. 129-70. Vacated streets.

Whenever any street, alley, easement or public way is vacated by official action, the zoning district abutting the centerline of the said vacated area shall not be affected by such proceeding.

(Code 1987, § 350.755; Ord. No. 61-1993, § 350.755, 2-23-1994)

Secs. 129-71—129-98. Reserved.

ARTICLE IV. ZONING DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 129-99. Allowable uses (residential districts).

Within the residential districts, no building or land shall be used except for one or more of the following uses.

P = Permitted Use
C = Conditional Use
A = Accessory Use
(-) = Not Allowed

	R-1				R-1A				R-2				R-3			
Use	Non Shore	G.D.	R.D.	N.E.	Non Shore	G.D.	R.D.	N.E.	Non Shore	G.D.	R.D.	N.E.	Non Shore	G.D.	R.D.	N.E.
Single Family Detached Residences (1 dwelling per parcel)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Two Family Residences	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P

Use	R-1 Non Shore	R-1 G.D.	R-1 R.D.	R-1 N.E.	R-1A Non Shore	R-1A G.D.	R-1A R.D.	R-1A N.E.	R-2 Non Shore	R-2 G.D.	R-2 R.D.	R-2 N.E.	R-3 Non Shore	R-3 G.D.	R-3 R.D.	R-3 N.E.
Twin Homes	-	-	-	-	-	-	-	-	C	C	C	C	C	C	C	C
Townhouses	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Lodging Room (1 per single family unit)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Multiple Dwelling Unit Structure (3-6 units)	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	P
Multiple Dwelling Unit Structure (Over 6 units)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Garages	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory Buildings (In accordance with Section 350:645)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory Grocery Store (Less than 400 sq. ft. in apartment complex containing at least 100 units and serving the principal structure)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Cemeteries	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Commercial Recreation	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Community Residential Facilities (16 or less)	-	-	-	-	-	-	-	-	-	-	-	-	P	C	C	C
Community Residential Facilities (6 or less)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Essential Service Buildings (Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

	R-1				R-1A				R-2				R-3			
Use	**Non Shore**	**G.D.**	**R.D.**	**N.E.**	**Non Shore**	**G. D.**	**R. D.**	**N. E.**	**Non Shore**	**G. D.**	**R. D.**	**N.E.**	**Non Shore**	**G. D.**	**R. D.**	**N. E.**
"essential service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.)																
Fences	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Gardening and Horticulture uses (Household use only, no on-site sales)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Home Occupants	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Licensed Daycare and Preschool (12 or less)	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-
Licensed Daycare and Preschool (13 or more)	C	C	C	-	C	C	C	-	C	C	C	-	-	-	-	-
Local Government Buildings	C	C	C	C	C	C	C	C	C	C	C	C	-	-	-	-
Nursery Schools	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-
Nursing Homes	C	C	C	-	C	C	C	-	C	C	C	-	C	C	C	-
Offices (Engineering, Accounting, Legal, Religious or Philanthropic Organizations subject to Section 350)	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C
Off-Street Parking	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Docks (In accordance with the Lake Minnetonka conservation district or other applicable regulations)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Public and Private schools	C	C	C	-	C	C	C	-	C	C	C	-	C	C	C	-
Public Park and Recreation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Recreational Equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Swimming Pools and Hot Tubs (in accordance with Section	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Use	R-1 Non Shore	R-1 G.D.	R-1 R.D.	R-1 N.E.	R-1A Non Shore	R-1A G.D.	R-1A R.D.	R-1A N.E.	R-2 Non Shore	R-2 G.D.	R-2 R.D.	R-2 N.E.	R-3 Non Shore	R-3 G.D.	R-3 R.D.	R-3 N.E.
350:645)																

Note. Letter designations shall be interpreted as meaning:

P = Permitted use;

C = Conditional use;

A = Accessory use;

(-) = Not allowed.

(Code 1987, § 350.640; Ord. No. 61-1993, § 350.640, 2-23-1994)

Sec. 129-100. Single-family residential (R-1).

(a) *Purpose (R-1).* The purpose of this district is to allow the continuation of existing residential development and the infill of existing lots in residential areas of the city where services are available.

(b) *Lot area, height, lot width, and yard requirements (R-1).*

(1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.

(2) *Lot area, lot width, and setback requirements (R-1).* The following minimum requirements shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

a. Minimum lot area: 10,000 square feet.

b. Minimum lot width: 60 feet.

c. Front yard: 30 feet.

d. Side yard: 10 feet.

e. Rear yard: 15 feet.

f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 60 feet, except that lots fronting on a cul-de-sac shall be 60 feet at the front building setback line.

(3) *Setback requirements for lots of record (R-1).* The following minimum setback requirements shall be observed for lots of record (R-1).

a. *Side yard requirements.* The required side yard setback shall be a minimum of 10 feet.

Minimum Side Yard Setback	
Lot Width	*On One Side Yard*
> 40— < 79 feet	6 feet
80—100 feet	8 feet
> 101 feet	10 feet

b. *Front yard.* Except as regulated in section 129-197(f), the front yard setback shall be based on the lot depth as follows:

Minimum Front Yard Setback

Lot Depth	*Setback*
< 60 feet	20 feet
61—80 feet	24 feet
> 81 feet	30 feet

(4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(Code 1987, § 350.620; Ord. No. 61-1993, § 350.620, 2-23-1994)

Sec. 129-101. Single-family residential (R-1A).

(a) *Purpose (R-1A).* The R-1A district shall function as an area in the city where historical platting practices of small lots call for a relaxation of development standard for remodeling and construction of infill residential.

(b) *Lot area, height, lot width, and yard requirements (R-1A).*

(1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.

(2) *Lot area, lot width, and setback requirements (R-1A).* The following minimum requirements shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

a. Minimum lot area: 6,000 square feet.

b. Minimum lot width: 40 feet.

c. Front yard: 20 feet.

d. Side yard: 10 feet.

e. Rear yard: 15 feet.

f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 40 feet, except that lots fronting on a cul-de-sac shall be 40 feet at the front building setback line.

(3) *Setback requirements for lots of record (R-1A).* Side yard setbacks shall be six feet and six feet unless the structure or site does not contain a garage in which case, one side yard setback shall be ten feet to accommodate a driveway access.

(4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(Code 1987, § 350.625; Ord. No. 61-1993, § 350.625, 2-23-1994)

Sec. 129-102. Two-family residential (R-2).

(a) *Purpose (R-2).* The R-2 district is intended to provide a district which will allow two-family residential dwellings and twin homes upon review.

(b) *Single-family detached dwellings (R-2).* The lot area, height, lot width, and yard requirements in R-2 districts are as follows:

(1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.

(2) *Lot area, lot width, and setback requirements.* The following minimum requirements for single-family detached dwellings in R-2 districts shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

a. Minimum lot area: 6,000 square feet.

b. Minimum lot width: 40 feet.

c. Front yard: 20 feet.

d. Side yard: 10 feet.

e. Rear yard: 15 feet.

f. Minimum lot depth: 80 feet.

Minimum lot frontage on an improved public street shall be 40 feet, except that lots fronting on a cul-de-sac shall be 40 feet at the front building setback line.

(3) *Setback requirements for lots of record (R-2).* Side yard setbacks shall be six feet and six feet unless the structure or site does not contain a garage in which case, one side yard setback shall be ten feet to accommodate a driveway access.

(4) *Shoreland overlay regulations.* See shoreland overlay regulations contained in chapter 129, article VIII for properties in the shoreland district.

(c) *Two-family dwellings and twin homes (R-2).* The lot area, height, lot width, and yard requirements in R-2 districts are as follows:

(1) *Building height.* No building hereafter erected shall exceed 2½ stories or 35 feet in height.

(2) *Lot area, lot width, and setback requirements.* The following minimum requirements for two-family dwellings and twin homes in R-2 districts shall be observed subject to additional requirements, exceptions, and modifications set forth in other sections of this chapter:

a. Minimum lot area: 14,000 square feet.

b. Minimum lot width: 80 feet.

c. Front yard: 20 feet.

d. Side yard: 10 feet.

e. Rear yard: 15 feet.

Minimum lot frontage on an improved public street shall be 80 feet, except that lots fronting on a cul-de-sac shall be 80 feet at the front building setback line.

(3) *Setback requirements for lots of record (R-2).* Side yard setbacks shall be six feet unless the structures or sites do not contain garages in which case, side yard setbacks shall be ten feet to accommodate driveway accesses.

(d) *Twin home dwelling; conditional uses (R-2).* Two-family dwellings and twin homes may be divided into single parcels of record with the party wall acting as the dividing lot line by issuance of a conditional use permit and subject to the following conditions:

(1) Each of the lots created in subdividing lands on which a two-family structure is located shall be equal in area or as near equal as is reasonably possible.

(2) Each lot so created shall contain no less than one-half of the minimum land area requirement for a twin home dwelling, and shall be shown on a registered survey.

(3) Except for setbacks along the common property line, all other setback and yard requirements shall be met.

(4) Separate services shall be provided to each residential unit for sanitary sewer, water, electricity, natural gas, telephone and other utilities.

(5) The two-family units, either existing or proposed, must be constructed in a side-by-side manner.

(6) To protect the safety and property of the owner and occupants of each individual unit, no existing two-family structure may be split into two separate ownerships unless and until the common party wall fire rating is brought up to new construction standards contained in the state building code. Party walls must provide sound transmission control ratings as per the state building code.

(7) The owner of property to be subdivided shall execute and record at their expense a declaration of covenants, conditions and restrictions as approved by the City Attorney. Said document is necessary to protect the rights of the individual owners sharing a single structure and the public as it relates to but is not limited to such things as maintenance, repair and construction in case of damage to the original structure and sanitation. The declarations, covenants, conditions and restrictions shall provide protection to the property owners and the city on the following subjects:

a. Building and use restrictions.

b. Party walls.

c. Relationships among owners of adjoining living units and arbitration of disputes.

The intent of these regulations is to promote harmony between the neighbors sharing a single structure and to protect the city and neighborhood from improper maintenance and/or disputes such as the following examples: one living unit being painted one color and the other unit having a different color or one side of the structure having one roof color and type of roof and the other side being of a different type and color. The city is concerned that all such disputes be avoided and that the regulations contained herein are designed to establish the rights of the parties prior to their entering into joint ownership of one structure. The city shall be a beneficiary of these declarations, covenants, conditions and restrictions.

(8) The authority to divide a single structure containing two-dwelling units shall be subject to chapter 121 relating to park dedication and other subdivision requirements and the City Council may impose other reasonable conditions.

(9) *Shoreland overlay regulations.* See the shoreland overlay regulations contained in article VIII of this chapter for properties in the shoreland district.

(Code 1987, § 350.630; Ord. No. 61-1993, § 350.630, 2-23-1994)

Sec. 129-103. Multiple-family residential (R-3).

(a) *Purpose (R-3).* The R-3 multiple-family district is intended to provide a district which will allow multiple-family dwellings where proper relationships to other land uses and adequate transportation services exist.

(b) *Performance requirements—Community residential facilities (R-3).* The performance requirements for community residential facilities in R-3 districts are as follows:

(1) Community residential facilities shall not be located in a two-family dwelling or twin home.

(2) No more than 16 community residential facility residents may be housed in excess of the persons allowed by the definition of the term "family," except for structures designed or newly built specifically for such use may allow a greater number provided that all other conditions of the conditional use permit are met.

(3) The minimum lot size is that prescribed for single-family detached dwellings.

(4) A minimum distance of 300 feet will be required between lots used as community residential facilities.

(c) *Same—Townhouses (R-3).* The performance requirements for townhouses in R-3 districts are as follows:

(1) Height limit is 2½ stories or 35 feet.

(2) The following minimum requirements shall be observed:

a. Minimum lot area.

1. Three-unit structure: 5,000 sq. ft./unit.

2. Four-unit structure: 4,500 sq. ft./unit.

3. Five-unit structure: 4,000 sq. ft./unit.

4. Six-unit structure: 4,000 sq. ft./unit.

b. Minimum setbacks.

1. Front: 30 feet.

2. Side: 20 feet.

3. Rear: 20 feet.

c. Off-street parking requirements. Two per unit, at least one of which shall be indoors. If the indoor parking is a part of the main structure and is set back at least 25 feet, and has an individual driveway for each unit, one off-street parking space may be credited for the portion of the driveway which shall be set back at least five feet from the public right-of-way. Any off-street parking located other than within the front yard area described above and serving more than one dwelling unit shall not be located closer than ten feet from the principal structure.

d. No more than one townhouse shall be located on any one platted lot. If more than one platted lot is used for said construction, the owner shall be required to replat said lots in accordance with chapter 121. The Council may waive said platting requirements upon recommendation of the Planning Commission and upon receipt of a signed statement from the owners combining said lots into one buildable parcel, said combination to be filed with the county auditor and taxed as one parcel.

Individual townhouse units may be conveyed or ownership transferred if copies of articles of incorporation, association bylaws, or other covenants are presented to the Council and said documents setting forth conditions for transfer are approved by the Council. Such approval shall not be given until the aforesaid documents shall be filed with the county recorder or the registrar of titles and all future owners of townhouses or units in the individual townhouse shall be bound by the conditions and covenants set forth in said documents. A certified copy of the documents filed with the county recorder or the registrar of titles shall be filed with the City Clerk.

(d) *Lot area, height, lot width, and yard requirements for other than multiple-family dwellings (R-3).* All lot area, height, lot width, yard and lot coverage requirements for single-family and two-family dwellings shall be as follows:

(1) Single-family shall comply with section 129-102(b).

(2) Two-family shall comply with section 129-102(c).

(e) *Height, lot size, lot area, parking and open space and general requirements for multiple-family dwellings (R-3).*

(1) *Minimum requirements.* The following minimum requirements shall be observed as hereinafter set forth:

a. Height shall be limited to three stories or 35 feet.

b. Minimum lot width shall be 120 feet and lot area 22,000 square feet.

c. Front yard shall be not less than 30 feet, or 1½ times the height of the building, whichever is greater.

d. Side and rear yards shall be not less than 20 feet or the height of the building, whichever is greater.

e. A side or rear yard abutting a street shall be not less than 25 feet or the height of the building, whichever is greater.

f. All height measurements shall be from the lowest grade level.

g. No accessory building shall exceed the height of the principal structure.

h. Distance between multiple-dwelling buildings. No building shall be erected closer to any other building than a distance equal to the sum of their respective heights or 40 feet, whichever is greater.

(2) *Lot area per dwelling unit.* Lot area per dwelling unit requirements are as follows:

a. Efficiency unit and one bedroom: five times minimum floor area (2,400 square feet).

b. Two bedroom: six times minimum floor area (4,560 square feet).

c. Three bedroom or more: seven times minimum floor area plus 500 square feet for each bedroom over three.

d. Minimum lot area average per dwelling: 3,000 square feet.

(3) *Lot usage.* Lot usage requirements are as follows:

a. A maximum of 30 percent for main or principal structure.

b. A minimum of 30 percent of the lot area shall be green area and landscape area, this may include all setback areas.

c. Forty percent of the area may be used for parking, driveways, garages, refuse areas, storage areas and other permitted uses.

(4) *Parking and sidewalk requirements.* Parking and sidewalk requirements for each dwelling unit:

a. Two and one-half spaces per unit, one of which must be indoors and 1½ of which may be outdoor parking.

b. Indoor parking shall be at least nine feet by 18 feet as a minimum size.

c. Outdoor parking, shall be at least nine feet by 18 feet as a minimum size.

d. All driveways and parking aisles shall be at least 25 feet in width.

e. All interior driveways, parking areas, loading areas, etc., shall be of blacktop or concrete construction.

f. All parking spaces shall be located on the same parcel as the principal structure.

g. There shall be no outdoor parking space within 20 feet of any public right-of-way or closer than ten feet from any adjacent lot.

h. Interior curbs shall be constructed of concrete to separate driving and parking areas from landscaped areas. The curb design shall be normal six inches in height.

i. Concrete walkways shall be provided from parking areas, loading zones and recreation areas to the entrances of the principal structure and

garages.

(5) *General requirements for all structures.*

a. *Building plan certification.* The building plan, including the site plan for a multiple dwelling shall be certified by an architect or engineer registered in the state, stating that he has personally viewed the site and has designed the building to fit the site as planned and to be harmonious with the neighboring buildings, topography and natural surroundings and in accordance with the purpose and objectives of this chapter. The architect or engineer shall further certify that he has been retained to provide full architectural service, and that he will be available to carry this project through to completion. No conditional use for a multiple dwelling shall be issued until the certificate is provided. On completion of the construction, the supervising architect or engineer shall file a written statement with the building official certifying that, to the best of his knowledge and belief, the construction, including site construction, has been performed in substantial compliance with the plans as approved by the city.

b. *Design.* The design shall make use of all land contained in the site. All of the site shall be related to the multiple use, either parking, circulation, recreation, landscaping, screening, building, storage, etc.

c. *Exterior vertical surface.* All exterior vertical surfaces shall have the same or equivalent facing material as that used in the front of the building.

d. *Drainage.* The drainage of stormwaters shall be provided for either on the site or in a public storm sewer.

e. *Garages.* Garages shall have the same construction and appearance as the main building.

f. *Landscaping.* A landscaping plan shall be required and approved by the City Council. All required yards shall either be open landscaped and green areas or be left in a natural state. If any yards are to be landscaped, they shall be landscaped attractively with lawn, trees, shrubs, etc. Any areas left in a natural state shall be properly maintained in a sightly and well-kept condition. Multiple-family residential yards adjoining any of the residential R-1, R-1A and R-2 districts shall be landscaped with buffer planting screens. Plans of such screens shall be submitted for approval as a part of the site plan and installed prior to issuance of a certificate of occupancy for any tract in the district.

g. *Open air drying of clothes.* Open air drying of clothes shall not be permitted on the grounds of the multiple-family dwellings except when the following conditions are met:

1. The areas for open air drying of clothes are specifically drawn on the original site plans.

2. A durable and dustless surface and adequate screening is provided for the entire area to be used for the drying of clothes.

h. *Incinerators and storage.* Any structure or equipment for the burning or storing of trash must comply with the regulations of the state pollution control agency. No open storage will be allowed on the site.

i. *Platting.* If more than one building is hereafter permitted to be erected upon one parcel of land then the buildings shall be so placed that any

future subdivision or conveyance will comply with all setback and other requirements of this chapter.

j. *Screening.* If screening is required by the City Council, it shall consist of a fence or wall that complies with this Code, but shall not extend within 15 feet of any street or ingress or egress. The screening shall be placed along property lines or in case of screening along a street, 15 feet from the street right-of-way with landscaping between the screening and the pavement. Planting of a type approved by the City Council shall also be required in addition to or in lieu of fencing.

k. *Building design and construction.*

1. *Efficiency dwelling units.* No more than 20 percent of the dwelling units in any one building shall be efficiency dwelling units.

2. *Sound.* Party and corridor partitions and floor systems shall be of a type rated by a laboratory regularly engaged in sound testing as capable of accomplishing an average sound transmission loss (using a nine-frequency test) of not less than 50 decibels. Door systems between corridors and dwelling units shall be of solid core construction and include gaskets and closure plates. Room relationships, hallway designs, door and window placements and plumbing and ventilating installations shall be such that they assist in the control of sound transmission from unit to unit.

3. *Projecting air conditioning and heating units.* Air conditioning or heating units projecting through exterior walls or windows shall be so located and designed that they neither unnecessarily generate nor transmit sound nor disrupt the architectural amenities of the building. Units projecting more than four inches beyond the exterior finish of a building wall shall be permitted only with the written consent of the building official, which shall be given only when building structural systems prevent compliance.

4. *Elevators.* Any multiple residence building of more than three stories shall be equipped with at least one public elevator.

5. *Determination of conformity.* Before any building permit is approved for a multiple dwelling the City Council upon recommendation of the building official shall determine whether the proposed use will conform to the performance standards. The developer or landowner shall supply data necessary to demonstrate such conformance. Such data may include description of equipment to be used, method of refuse disposal, type and location of exterior storage, etc. It may occasionally be necessary for a developer to employ a specialized consultant to demonstrate that a given use will not exceed the performance standards.

(f) *Offices in multiple-family district (R-3).* All offices in R-3 shall conform to the following performance standards:

(1) There shall be at least 2,000 square feet of floor area of office space on the main floor. The maximum office space in any structure shall not exceed 6,000 square feet.

(2) The lot on which the structure is located shall contain at least 40,000 square feet.

(3) One off-street parking space shall be provided for each 200 square feet of floor space. A detailed plan with parking spaces shown shall be made a part of the permit.

(4) A landscaping plan shall be presented and incorporated as a part of the conditional use permit and shall provide for a minimum ten-foot setback from all parking areas to abutting property lines and shall provide that on the ten-foot setback, shrubbery will be planted and maintained by the occupant of the property. The landscaping plan shall show that at least 30 percent of the land area will be maintained in open space consisting of greenery and shrubbery and will not be used for building, parking, or accessory purposes.

(5) All offices in this use district shall abide by the terms of the special permit to limit truck deliveries to the hours of 8:00 a.m. to 5:00 p.m. each day.

(6) No outside storage shall be allowed on the premises without the specific consent of the Council as stated in the permit.

(7) Illuminated flashing signs are prohibited. No sign shall be erected which has more than nine square feet of total area including both sides of the sign if a message is contained on both sides, and the sign shall not extend on to any public right-of-way. No sign shall exceed a height of five feet from the ground level where the sign is located.

(8) Lighting of any parking area shall be accomplished in such a way as to have no direct source of light visible from a public right-of-way or from adjacent properties.

(9) Prior to occupancy of the structure, approval shall be obtained from the Fire Chief or his designated inspector and from the building official, showing compliance with all city ordinances and codes.

(10) The Council may require a traffic circulation plan or the location or relocation of driveways to the property to promote traffic circulation and the health, safety, and general welfare of the community.

(Code 1987, §§ 350.635, 350.780; Ord. No. 61-1993, §§ 350.635, 350.780, 2-23-1994; Ord. No. 13-2006, 7-9-2006)

Secs. 129-104—129-134. Reserved.

DIVISION 2. BUSINESS AND INDUSTRIAL DISTRICTS

Sec. 129-135. Allowable uses.

Within the business and industrial districts, no building or land shall be used except for one or more of the following uses.

P = Permitted Use
C = Conditional Use
A = Accessory Use
(-) = Not Allowed

Use	B-1 Non Shore	B-1 G.D.	B-1 R.D.	B-2 Non Shore	B-2 G.D.	B-2 R.D.	B-3 Non Shore	B-3 G.D.	B-3 R.D.	I-1 Non Shore	I-1 G.D.	I-1 R.D.
Accessory Outdoor Retail Uses	C	C	C	-	-	-	-	-	-	-	-	-
Accessory Buildings Other than Garages and Accessory Sheds	-	-	-	-	-	-	C	C	C	-	-	-
Accessory Sheds	A	A	A	A	A	A	A	A	A			
Adult Establishments	P	P	P	-	-	-	-	-	-	P	P	P
Animal Hospital	C	C	C	C	C	C	-	-	-	C	C	C
Assembly/Storage of: 1. Apparel 2. Food Products 3. Glass 4. Leather 5. Pottery 6. Lumber and Wood Products 7. Paper Products 8. Rock and Stone Products 9. Textiles 10. Tobacco Products 11. Fabrication Metal Products 12. Machinery and Appliances 13. Transportation Equipment 14. Liquid Bulk Storage	-	-	-	-	-	-	-	-	-	C	C	C
Auction Hall	C	C	C	-	-	-	-	-	-	C	C	C
Banks	P	P	P	P	P	P	-	-	-	P	P	P
Barber and Beauty Shops	P	P	P	P	P	P	-	-	-	P	P	P
Boat and Marine Sales	C	C	C	C	C	C	-	-	-	C	C	C
Brewery	C	C	C	C	C	C	-	-	-	C	C	C
Brewpub	C	C	C	C	C	C	-	-	-	C	C	C
Bus Terminal and Taxi Stands	C	C	C	C	C	C	-	-	-	C	C	C

Use	B-1 Non Shore	B-1 G.D.	B-1 R.D.	B-2 Non Shore	B-2 G.D.	B-2 R.D.	B-3 Non Shore	B-3 G.D.	B-3 R.D.	I-1 Non Shore	I-1 G.D.	I-1 R.D.
Car Wash	-	-	-	C	C	C	-	-	-	C	C	C
Churches	P	P	P	P	P	P	C	C	C	P	P	P
Cocktail Room	C	C	C	C	C	C	-	-	-	C	C	C
Commercial Parking Lots (Not affiliated with principal use)	C	C	C	C	C	C	-	-	-	C	C	C
Commercial Recreation	C	C	C	C	C	C	-	-	-	C	C	C
Community Residential Facilities (16 or less)	-	-	-	-	-	-	-	-	-	-	-	-
Community Residential Facilities (6 or less)	-	-	-	-	-	-	P	P	P	-	-	-
Consignment Shops	P	P	P	P	P	P	C	C	C	C	C	C
Construction and Special Trade Contractor	-	-	-	-	-	-	-	-	-	C	C	C
Cultural and Fraternal Institutions	C	C	C	C	C	C	-	-	-	C	C	C
Delicatessen and Dairy Store	P	P	P	P	P	P	C	C	C	C	C	C
Drive- In Retailing Establishments	C	C	C	C	C	C	-	-	-	C	C	C
Drug Store	P	P	P	P	P	P	C	C	C	C	C	C
Electrical Substations	-	-	-	-	-	-	-	-	-	C	C	C
Essential Service Buildings (Essential service building means any building or similar structure designed and constructed to house or serve an essential service or public utility and necessary for the operation or maintenance thereof. The term "essential	C	C	C	C	C	C	C	C	C	C	C	C

Use	B-1 Non Shore	B-1 G.D.	B-1 R.D.	B-2 Non Shore	B-2 G.D.	B-2 R.D.	B-3 Non Shore	B-3 G.D.	B-3 R.D.	I-1 Non Shore	I-1 G.D.	I-1 R.D.
service building" includes, without limitation, publicly owned water well houses, sewer lift stations, and water towers.)												
Grocery Store	P	P	P	P	P	P	C	C	C	C	C	C
Health Club, Fitness Center and Dance Studio	P	P	P	P	P	P	-	-	-	P	P	P
Home Occupations	-	-	-	-	-	-	P	P	P	-	-	-
Hospitals	C	C	C	C	C	C	-	-	-	C	C	C
Household Goods-Warehousing and Storage	-	-	-	-	-	-	-	-	-	P	P	P
Incidental Repair or Processing (Necessary to conduct a permitted principal use)	A	A	A	A	A	A	-	-	-	P	P	P
Institutions and Non-Profit Corporations (Religious, Health, Educational, or Charitable Nature)	P	P	P	P	P	P	C	C	C	C	C	C
Laundry and Dry Cleaning	P	P	P	P	P	P	-	-	-	P	P	P
Licensed Day Care Facilities	C	C	C	C	C	C	C	C	C	C	C	C
Limousine Service	C	C	C	C	C	C	-	-	-	C	C	C
Liquor Stores	P	P	P	C	C	C	-	-	-	C	C	C
Major Auto Repair, Tire, Battery Stores	-	-	-	C	C	C	-	-	-	C	C	C
Medical and Dental Clinics	P	P	P	-	P	P	-	-	-	P	P	P
Microdistillery	C	C	C	C	C	C	-	-	-	C	C	C
Motel and Motor Hotels	C	C	C	C	C	C	-	-	-	C	C	C

	B-1			B-2			B-3			I-1		
Use	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**
Motel Fuel Station	C	C	C	C	C	C	-	-	-	C	C	C
Motor Fuel Station, Convenience Store	C	C	C	C	C	C	-	-	-	C	C	C
Multiple Dwelling Structure	C	C	C	C	C	C	C	C	C	-	-	-
Newspaper Printing or Published Shops	C	C	C	C	C	C	-	-	-	C	C	C
Offices	P	P	P	P	P	P	-	-	-	P	P	P
Open Sales Lots	-	-	-	C	C	C	-	-	-	C	C	C
Planned Industrial Area (Subject to Section 350:680)	-	-	-	-	-	-	-	-	-	C	C	C
Private Lodges and Clubs	P	P	P	P	P	P	-	-	-	P	P	P
Private Garages, Off-Street Parking	A	A	A	A	A	A	A	A	A	A	A	A
Public and Private Utility Uses	-	-	-	-	-	-	-	-	-	P	P	P
Public Buildings	P	P	P	P	P	P	P	P	P	P	P	P
Public Park and Recreation	P	P	P	P	P	P	P	P	P	P	P	P
Public and Private Schools	C	C	C	C	C	C	-	-	-	-	-	-
Refrigerated Warehousing	-	-	-	-	-	-	-	-	-	P	P	P
Research Laboratories	-	-	-	-	-	-	-	-	-	P	P	P
Restaurants (Class I)	P	P	P	P	P	P	C	C	C	C	C	C
Restaurants (Class II)	C	C	C	C	C	C	-	-	-	C	C	C
Restaurants (Class III)	C	C	C	C	C	C	-	-	-	C	C	C

	B-1			B-2			B-3			I-1		
Use	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**	**Non Shore**	**G.D.**	**R.D.**
Retail Businesses	P	P	P	P	P	P	-	-	-	P	P	P
Retail and Mail Order Businesses	C	C	C	C	C	C	-	-	-	P	P	P
Service Shops	P	P	P	P	P	P	-	-	-	P	P	P
Single Family Detached Residences	-	-	-	-	-	-	P	P	P	-	-	-
Taproom	C	C	C	C	C	C	-	-	-	C	C	C
Television and Radio Stations	-	-	-	-	-	-	-	-	-	C	C	C
Temporary Construction Buildings	A	A	A	A	A	A	-	-	-	-	-	-
Theaters	P	P	P	P	P	P	-	-	-	P	P	P
Townhouses	-	-	-	-	-	-	C	C	C	-	-	-
Twin Homes	-	-	-	-	-	-	C	C	C	-	-	-
Two Family Dwellings	-	-	-	-	-	-	P	P	P	-	-	-
Warehousing and Wholesaling	-	-	-	-	-	-	-	-	-	P	P	P
Wholesale and Assembly Operations	C	C	C	C	C	C	-	-	-	C	C	C

Note. Letter designations shall be interpreted as meaning:

P = Permitted use;

C = Conditional use;

A = Accessory use;

(-) = Not allowed.

(Code 1987, § 350.670; Ord. No. 61-1993, § 350.670, 2-23-1994; Ord. No. 06-2007, 5-8-2007; Ord. No. 10-2016, 9-4-2016)

Sec. 129-136. Central business district (B-1).

(a) *Purpose (B-1).* This district is established to recognize the unique character of the central business district in terms of land use, height regulations, parking requirements and circulation.

(b) *Lot area, height, lot width and yard requirements (B-1).* The lot area, height, lot width and yard requirements for the B-1 district is as follows:

(1) The maximum building height is 35 feet. The maximum building height with conditional use permit is 45 feet.

(2) The minimum lot size is 7,500 square feet.

(3) Side and rear setback if abutting residential district is the same as the B-2 district.

(Code 1987, § 350.650; Ord. No. 61-1993, § 350.650, 2-23-1994)

Sec. 129-137. General business district (B-2).

(a) *Purpose (B-2).* The general business district will allow local retail sales and services along with office space opportunities to serve local population demand and needs of nonhighway orientation. This district will encourage compact center for retail sales and services by grouping businesses in patterns of workable relationships, by limiting and controlling uses near residential areas and by excluding highway oriented and other business that tends to disrupt the shopping center or its circulation patterns.

(b) *Lot area, height, lot width and yard requirements (B-2).* The lot area, height, lot width and yard requirements for the B-2 district are as follows:

(1) No building shall exceed 35 feet in height.

(2) The minimum lot area is 20,000 square feet.

(3) The front, side, rear setbacks are 30 feet.

(4) The minimum setback from side or rear lot line if abutting any residential district is 50 feet.

(5) If the City Council allows more than one building on one lot, an open space equal to half the sum of the heights of the two buildings must be provided between the buildings.

(6) Refer to section 129-316(b), pertaining to screening.

(7) The minimum lot width is 80 feet.

(Code 1987, § 350.655; Ord. No. 61-1993, § 350.650, 2-23-1994)

Sec. 129-138. Neighborhood business district (B-3).

(a) *Purpose (B-3).* The neighborhood commercial center shall function as a small service area which may supply local retail sales to nearby residents.

(b) *Lot area, height, lot width, and yard requirements (B-3).* The lot area, height, lot width and yard requirements for the B-3 district are as follows:

(1) No building shall exceed 35 feet in height.

(2) The minimum lot area is 10,000 square feet.

(3) The front, side, rear setbacks are 30 feet.

(4) The minimum setback from side or rear residential area is 50 feet.

(5) Refer to section 129-316(b), pertaining to screening.

(6) The minimum lot width is 60 feet.

(7) All residential uses subject to lot area, height, and yard requirements for said type of housing as set forth in applicable sections.

(Code 1987, § 350.660; Ord. No. 61-1993, § 350.660, 2-23-1994)

Sec. 129-139. PED—PUD Pedestrian planned unit development district.

(a) *Purpose (PED—PUD).* The pedestrian planned unit development zoning district is intended to provide a range of retail and service commercial, office, institutional, public, open space, and attached high density residential uses that are organized and planned in a manner that is pedestrian friendly. The mixed use concept embodies traditional town planning concepts to create an urban environment allowing arrangements of mixed residential and commercial uses. A high degree of aesthetic detail is to be provided in building and site design to promote a village community atmosphere.

(b) *Permitted uses.* The permitted uses for the PED—PUD district are as follows:

(1) Adult establishments.

(2) Professional offices.

(3) Retail sales and services.

(4) Restaurants (Class I, II and III) excluding drive-through.

(5) Drug store.

(6) Public and institutional uses.

(7) Public and private parks.

(8) Multifamily dwelling units.

(9) Townhouses.

(c) *Conditional uses.* The conditional uses for the PED—PUD district are as follows:

(1) Banks with drive-through services.

(2) Restaurants (classes I, II and III) including drive-through services. The provisions of section 129-326, pertaining to drive-in business development standards, shall not apply to drive-through services in the pedestrian district. Drive-through services in the pedestrian district shall comply with the performance standards provided in this subsection:

a. *Stacking spaces.* Unless approved by the City Council as part of the pedestrian planned development unit development project following review and favor recommendation of a traffic circulation plan by the city engineer, at least two stacking spaces must be provided per drive-through lane. Required width for vehicle drive aisles may not be allocated toward stacking spaces or stacking lanes.

b. *Stacking space dimensions.* Each stacking space must be a minimum of nine feet by 18 feet in size.

c. *Design.* Each drive-through lane must be clearly defined and designed so as not to conflict or interfere with pedestrian movement or other vehicular traffic using the site and not to conflict with access for drive aisles, fire lanes, or street ingress/egress.

d. *Screening.* All elements of the drive through service area, including, but not limited to, menu boards, order stations, teller windows, and vehicle lights from the stacking lanes, must be screened or appropriately landscaped from adjacent residential uses, if appropriate.

e. *Speakers.* In addition to meeting the requirements of the noise regulations included in this Code, if within 300 feet of residential properties, speakers must not produce noise that exceeds 75 dBA as measured five feet from the speaker.

f. *Hours of operation.* Restaurant drive-through windows must not be operated between the hours of 10:00 p.m. and 6:00 a.m. unless alternate hours are approved by the City Council as part of the conditional use permit.

g. *Liquor.* No liquor may be dispensed or sold at a drive-through window for class III restaurant.

h. *Conditional use permit criteria.* The provisions of section 129-38 are considered and satisfactorily met.

(3) Brewery, Brewpub, Taproom, Microdistillery, or Cocktail Room. The provisions of section 129-329 shall apply.

(d) *Accessory uses.*

(1) Pavilions and shelter houses.

(2) Automatic teller machines.

(3) Bus shelters.

(4) Signs.

(5) Public telephone booths.

(6) Antennas.

(7) Private garages, off-street parking and loading spaces.

(e) *Bulk requirements.*

(1) Ordinary high-water setback (OHW). The minimum OHW setback is:

a. Commercial and mixed uses: 50 feet.

b. Residential uses: 50 feet.

(2) Height. The maximum height is:

a. Commercial and mixed uses: 50 feet.

b. Residential uses: 35 feet.

(3) Maximum impervious surface: 75 percent or as approved by PUD.

(4) All other bulk requirements as approved by PUD.

(5) There is not a minimum lot size requirement for PED—PUD district.

(f) *Building facade.* The building facade requirements are as follows:

(1) *Window area ratio.*

a. Front facade for first story: 45—65 percent window area in a virtually continuous pattern.

b. Front facade for second story and up: 25—45 percent window area.

c. Exposed side and rear facades: minimum 25 percent window area or use of landscaping or building fenestration.

(2) *Material standards.*

a. Wood lap siding as the predominant exterior material for street facing elevations.

b. Bulkheads may use wood, brick, stone, or precast products.

c. Window and siding trim may be combination of wood materials.

(g) *Signage.* Signage in this district is allowed as prescribed in this subsection. Signage as prescribed by other sections of this chapter is not applicable unless a specific sign program for a redevelopment project, which is included in a redevelopment plan, as has been established pursuant to state statutes, has been approved by Council resolution.

(1) *Exempt signs.*

a. Temporary civic, cultural and public service window posters, when posted inside commercial establishments, provided they do not, individually or combined, occupy more than 25 percent of the total area of said window or five square feet, whichever is less. Temporary window signs are permitted on ground floor windows only.

b. Temporary promotional or special sales signs when erected in conjunction with a commercial establishment provided they do not, individually or combined with other window signs, exceed 25 percent of the total area of the display window or 16 square feet, whichever is less. Temporary signs advertising a business opening or change in ownership shall not exceed an area of 16 square feet, and shall require a temporary sign permit, specifying the date of removal. All temporary signs shall have the date of removal printed clearly on the lower right hand corner, as viewed from the exterior, and shall be permitted for a period not to exceed 30 days. Temporary promotional signs are permitted on ground floor windows only.

(2) *Prohibited signs.*

a. Signs employing mercury vapor, low pressure and high pressure sodium and metal halide lighting; plastic panel rearlighted signs.

b. Signs on roofs, dormers, and balconies.

c. Billboards.

d. Signs painted or mounted upon the exterior side or rear walls on any principal or accessory building or structure, except as otherwise permitted hereunder.

e. Freestanding signs over six feet in height.

f. Backlit awnings.

g. Interchangeable letter boards or panels.

h. Flashing signs.

i. Off-premises signs.

(3) *Permitted signs.*

a. Wall-mounted or painted signs, provided the following standards are met:

1. The sign shall be affixed to the front facade of the building, and shall project outward from the wall to which it is attached no more than six inches.

2. The area of the signboard shall not exceed five percent of the ground floor building facade area or 24 square feet, whichever is less.

3. The height of the lettering, numbers, or graphics shall not exceed 12 inches.

4. The sign shall be granted to commercial uses occupying the ground floor of buildings facing public streets only and shall not be allocated to other uses.

5. Limited to one sign per business.

b. One wall-mounted sign per business, not exceeding six square feet in area, shall be permitted on any side or rear entrance open to the public.

c. Wall-mounted building directory signs identifying the occupants of a commercial building, including upper story business uses; provided the following standards are met:

1. The sign is located next to the entrance.

2. The sign shall project outward from the wall to which it is attached no more than six inches.

3. The sign shall not extend above the parapet, eave, or building facade.

4. The area of the signboard shall not exceed three square feet, with each tenant limited to one square foot.

5. The height of the lettering, numbers, or graphics shall not exceed four inches.

6. One such sign is allowed per public building entrance.

d. Applied letters may substitute for wall-mounted signs, if constructed of painted wood, painted cast metal, bronze, brass, acrylic or black anodized aluminum. The height of applied letters shall not exceed 12 inches.

e. Projecting signs, including graphics or icon signs, mounted perpendicular to the building wall; provided the following standards are met:

1. The signboard shall not exceed an area of six square feet.

2. The distance from the ground to the lower edge of the signboard shall be ten feet or greater.

3. The height of the top edge of the signboard shall not exceed the height of the wall from which the sign projects, if attached to a single story building, or the height of the sill or bottom of any second story window, if attached to a multistory building.

4. The distance from the building wall to the signboard shall not exceed six inches.

5. The width of the signboard shall not exceed three feet.

6. Limited to one sign per business. Projecting signs are not permitted in conjunction with wall-mounted, freestanding, or applied letter signs.

7. Granted to ground floor commercial uses only.

f. Awning signs, for ground floor uses only; provided that the following standards are met:

1. If acting as the main business sign, it shall not exceed 24 square feet in area, and the height of the lettering, numbers, or graphics shall not exceed 12 inches.

2. If acting as an auxiliary business sign, it shall be located on the valance only, shall not exceed four square feet in area, and the height of the

lettering, numbers, or graphics shall not exceed four inches.

3. Limited to two such signs per business.

4. If acting as the main business sign, it shall not be in addition to a wall-mounted or applied letter sign.

g. Window or door signs, provided that the following standards are met:

1. The sign shall not exceed ten percent of the window or door area or four square feet, whichever is less.

2. The sign shall be silk screened, hand painted, applied letters/graphics, neon tubing or other sign technologies that meet these standards.

3. Limited to one sign per business, applied on either the window or the door, but not on both.

4. The sign shall not have an opaque backing of any type although smoked glass is allowed.

5. May be in addition to only one of the following: a wall-mounted sign, a freestanding sign, an applied letter sign, a projecting sign or a valance awning sign.

h. One freestanding sign, provided that the following standards are met:

1. The building in which the advertising business is located, shall be set back a minimum of six feet from a public street right-of-way.

2. The area of each face of the signboard shall not exceed six square feet and the signboard shall not have more than two readable faces.

3. The height of the top of the signboard, or of any posts, brackets, or other supporting elements shall not exceed six feet from the ground.

4. The signboard shall be constructed of wood, acrylic, aluminum or metal and shall be architecturally compatible with the style, composition, materials, colors and details of the building.

5. No part of the sign shall encroach on the right-of-way and its location shall not interfere with pedestrian or vehicular circulation.

6. Limited to one sign per building and shall not be in addition to wall-mounted, applied letter or projecting signs.

7. The readable faces of the sign shall be perpendicular to the adjacent street.

i. Businesses with frontage on more than one public street are allowed the permitted sign criteria for each street frontage.

j. Businesses with service entrances may identify these with one wall-mounted or applied letter sign not exceeding two square feet.

k. One directional sign, facing a rear parking lot. This sign may be any type of permitted sign other than a freestanding sign, but shall be limited to three square feet in area.

l. In addition to other signage, restaurants and cafes shall be permitted. One wall-mounted display featuring the actual menu as used at the dining table, to be contained within a shallow wood or metal case and clearly visible through a glass front. The display case shall be attached to the building wall, next to the main entrance, at a height of approximately five feet, shall not exceed a total area of two square feet, and may be lighted.

m. Each business shall identify the number of its address at the main entry within

the sign parameters of this subsection. Each business shall identify the number of its address at all secondary entries with applied numbers supplied by the city to ensure a consistent style throughout the district.

(h) *Parking.* Parking in this district is allowed as prescribed in this subdivision. Parking as prescribed by other sections of this chapter is not applicable.

(1) Parking in the pedestrian district is a shared system. Only stalls designated for residential uses or fleet vehicles are to be restricted/reserved. The district's mixed-use will allow the maximum utility of the fewest number of parking stalls. Therefore, this chapter does not set parking stall quantity requirements in the pedestrian district. Instead, developers will be required to determine parking demand for their project's particular tenant mix based on industry standards such as those stated in Shared Parking; Urban Land Institute, 1983, and design their project accordingly. In calculating parking requirements, developers should consider parking demand of existing uses within the district and existing supply, both on and off-street. Upon construction, new parking lots will become part of the shared system according to the city's policy on parking in the pedestrian district.

(2) Residential uses in the pedestrian district shall have two designated parking spaces per unit. One of those is to be enclosed. The term "enclosed" indicates that the parking space is to have an overhead cover, a closeable auto entrance door and continuous walls. It could be a parking garage with common parking spaces all behind one entrance door.

(3) Parking spaces. Each parking space shall not be less than nine feet wide and 18 feet long exclusive of access drives. Handicapped parking shall be provided pursuant to state law which at the time of this publication requires a striped loading zone five feet by 18 feet adjacent to the designated stall of eight feet by 18 feet.

(4) All commercial off-street parking must be in rear or side yards.

(5) Where off-street parking abuts a public street right-of-way, all vehicular use areas other than necessary access drives are to be set back a minimum of eight feet from the right-of-way. Setback areas are to be landscaped with plants, low walls and fences, earthen berms, etc., to provide some screening of the parking lot.

(6) For each 100 square feet of vehicular use area, five square feet of interior landscaping area is to be provided. Setback areas described above cannot be counted toward this requirement.

(7) A minimum of 25 percent of vehicular use areas are to be covered by tree canopy when trees are calculated at two-thirds mature size. Use the following formula to calculate canopy spread: Mature tree height according to typical nursery standards times 0.66 equals canopy spread.

(8) Proposers of parking lots must demonstrate how pedestrian movement will flow between parking vehicles and reasonably anticipated destinations. Parking lot design must provide pedestrian access routes within parking lots as necessary to allow convenient and safe circulation.

(9) All parking lots are to be illuminated to a minimum maintained 0.6 footcandle level with a 4:1 uniformity ratio.

(Code 1987, § 350.651; Ord. No. 110-2000, § 350.651, 7-29-2000; Ord. No. 5-2004, 7-04-2004; Ord. No. 13-2006, 7-9-2006; Ord. No. 05-2007, 3-27-2007; Ord. No. 10-2016, 9-4-2016)

Sec. 129-140. DEST—PUD destination planned unit development district.

(a) *Purpose (DEST—PUD).* The destination district is intended to allow for retail sales and services intended to serve the needs of the local population. This district is primarily oriented at the motoring public because of its location along minor arterial roadways and good visibility.

(b) *Permitted uses.* The permitted uses in the DEST—PUD district are as follows:

(1) Banks.

(2) Barbershops and beauty shops.

(3) Businesses or trade schools.

(4) Churches.

(5) Consignment shops.

(6) Day care.

(7) Delicatessens.

(8) Drug stores.

(9) Grocery stores.

(10) Health clubs, fitness centers and dance studios.

(11) Institutions and charitable organizations.

(12) Liquor stores.

(13) Medical and dental clinics.

(14) Offices.

(15) Private lodges and clubs.

(16) Public buildings.

(17) Public and private parks and recreation.

(18) Restaurants (classes I, II and III).

(19) Retail businesses.

(20) Service shops.

(21) Theatres.

(22) Transit stations.

(c) *Conditional uses.* The conditional uses in the DEST—PUD district are as follows:

(1) Accessory outdoor retail uses.

(2) Animal hospitals.

(3) Commercial parking lots.

(4) Cultural and fraternal organizations.

(5) Drive-in retailing establishments.

(6) Hospitals.

(7) Minor auto repair, tire and battery stores.

(8) Taverns.

(9) Brewery, Brewpub, Taproom, Microdistillery, or Cocktail Room. The provisions of section 129-329 shall apply.

(d) *Accessory uses.* The accessory uses in the DEST—PUD district are as follows:

(1) Parking lots.

(2) Automatic teller machines (ATM).

(3) Bus shelters.

(4) Signs.

(5) Public telephone booths.

(6) Antennas.

(e) *Bulk standards.* The bulk standards in the DEST—PUD district are as follows:

(1) Ordinary high-water setback (OHW): minimum of 50 feet.

(2) Height: maximum of 50 feet.

(3) Impervious surface: maximum of 75 percent or as approved by PUD.

(3) All other bulk requirements as approved by PUD. There is not a minimum lot size requirement for the DEST-PUD district.

(Code 1987, § 350.652; Ord. No. 110-2000, § 350.652, 7-29-2000; Ord. No. 12-2003, 12-7-2003; Ord. No. 10-2016, 9-4-2016)

Sec. 129-141. L—PUD linear planned unit development district.

(a) *Purpose (L—PUD).* The purpose of the linear district is to provide a mix of medium and high density residential, institutional, and office uses. The linear district provide a key entry point to the downtown core and will provide a higher degree of aesthetic treatment to complement the downtown.

(b) *Permitted uses.* The permitted uses in the L—PUD district are as follows:

(1) Townhouses.

(2) Multiple-family dwellings (six plus units).

(3) Offices.

(4) Public and private schools.

(5) Public parks and recreation.

(6) Public and institutional buildings.

(7) Private lodges and clubs.

(c) *Conditional uses.* The conditional uses in the L—PUD district are as follows:

(1) Gas stations.

(2) Convenience stores.

(3) Boat and marine sales.

(d) *Accessory uses.* The accessory uses in the L—PUD district are as follows:

(1) Parking lots.

(2) Garages.

(3) Bus shelters.

(4) Signs.

(5) Public telephone booths.

(6) Antennas.

(e) *Bulk standards.*

(1) Ordinary high-water setback (OHW): minimum of 50 feet.

(2) Side and rear yard setbacks (nonresidential uses abutting a residential district): minimum of 30 feet.

(3) Height: maximum of 35 feet.

(4) Impervious surface: maximum of 75 percent or as approved by CUP.

(5) All other bulk requirements as approved by PUD. There is not a minimum lot size requirement for the L-PUD district.

(Code 1987, § 350.653; Ord. No. 110-2000, § 350.653, 7-29-2000)

Sec. 129-142. Light industrial (I-1).

(a) *Purpose (I-1).* This district shall serve as a development opportunity for industrial sites.

(b) *Lot area, height, lot width and yard requirements (I-1).* The lot area, height, lot width and yard requirements for the I-1 district are as follows:

(1) Floor area ratio shall not exceed one to one.

(2) Front yard setback: 30 feet.

(3) Lot width: 100 feet.

(4) Lot area: minimum of 30,000 square feet.

(5) Rear yard setback: 30 feet.

(6) Side yard setbacks:

a. When abutting a residential district: 50 feet.

b. When abutting a street: 15 feet.

c. When abutting a railroad: zero feet.

(Code 1987, § 350.665; Ord. No. 61-1993, § 350.665, 2-23-1994)

Sec. 129-143. Planned industrial area (PIA).

(a) *Purpose (PIA).* The purpose of the planned industrial area (PIA) is to facilitate the conversion and division of industrial structures into two or more separate uses in order to promote economical and efficient land use, expand employment opportunities, improve levels of amenities and/or encourage creative design.

(b) *Conditional use permit (PIA).* The owner of any tract of land in the light industrial (I-1) district may submit to the City Council for approval, a plan for the use and development of such a tract of land as planned industrial area (PIA) by making application for a conditional use permit authorizing completion of the project according to the plan.

(c) *Subdivision (PIA).* Industrial buildings may be subdivided into two or more units under a condominium plat or other appropriate technique providing that the parking requirements and other applicable standards in this chapter and conditional use permit are met. All condominium plats or subdivisions of any nature shall be reviewed and approved by the Planning Commission and City Council prior to filing with the county. All plats shall be consistent with the development plan as included in the conditional use permit.

(d) *Conditional use permit procedure (PIA).* Conditional use permit review/issuance. The conditional use permit review shall include an application for conditional use permit subject to the requirements of section 129-38. Additionally, the site plan (master development plan) shall include the following:

(1) Names, addresses, and telephone numbers of owners, developers, and designers;

name of development, date, north point and scale.

(2) Sufficient information on adjacent properties to indicate relationships to the proposed development, including such information as land divisions, land use, pedestrian and vehicular circulation, significant natural features or physical improvements and drainage pattern.

(3) Existing site conditions including contours at intervals sufficient to indicate topographic conditions (generally two feet).

(4) Treatment of transitional zones around the perimeter of the project for protection of adjoining properties, including setbacks and buffer areas, landscaping, fences or other screening, height limitation or other provisions.

(5) A narrative or graphic explanation of the planning and design concepts and objectives the owner intends to follow in implementing the proposed development, including a description of the character of the proposed development; the rationale behind the assumptions and choices made; the compatibility with the surrounding areas; and design considerations for architecture, engineering, landscaping, open space, etc.

(6) A statement of intent with regard to selling or leasing all or portions of the proposed development.

(7) Proposed phasing timetable.

(e) *Permitted uses (PIA).* Within any planned industrial area, no structure or land shall be used except for one or more of the following. The numbers in parenthesis refer to the Standard Industrial Classification Manual, 1987 edition.

(1) Public buildings.

(2) Public and private utility uses.

(3) Refrigerated warehousing (4222).

(4) Household goods warehousing and storage (4214).

(f) O*peration permit (PIA)—Uses.* Within any planned industrial area, no structure or land shall be used for the following except by operations permit. The numbers in parenthesis refer to the Standard Industrial Classification Manual, 1987 edition.

(1) *Manufacturing.* The manufacturing of the following:

a. Food and kindred products (20), excluding (2011)—(2017), (2044), (2046), (2062), (2063) and (2074)—(2079).

b. Textile milled products (22).

c. Apparel and other finished products made from fabrics and other similar materials (23).

d. Millwork (2431).

e. Wood kitchen cabinets (2343).

f. Furniture and fixtures (25).

g. Paper and allied products (26) excluding (2611)—(2631) and (2661).

h. Printing, publishing and allied industries (27).

i. Leather and leather products (31) excluding (3111).

j. Stone, clay, glass and concrete products (32) excluding (3251), (3255), (3259), (3271)—(3281) and (3292).

k. Cold rolled steel sheet, strip and bars (3316).

l. Steel pipe and tubes (3317).

m. Fabricated metal products, except machinery and transportation equipment (34) excluding (3448) and (3471)—(3489).

n. Machinery, except electrical (35) excluding (3519), (3523), (3531)—(3533), (3536) and (3537).

o. Electrical and electronic machinery, equipment and supplies (36) excluding (3612), (3624), (3672) and (3691)—(3693).

p. Measuring, analyzing and controlling instruments; photographic, medical and

optical goals; watches and clocks (38).

q. Miscellaneous manufacturing industries (39).

(2) *Public utilities.* Transportation, communication and other public utilities including:

a. Local and suburban transit and inter-urban highway passenger transportation (41).

b. General warehousing and storage (4225).

(3) *Wholesale.* The wholesaling of, including the following:

a. Durable goods (50) excluding (5012), (5031), (5039), (5051), (5052), (5082), (5083) and (5093).

b. Nondurable goods (51) excluding (5154)—(5172).

(4) *Retail.* Retail trade, including the following:

a. Building materials, hardware, garden supply, and mobile home dealers (52) excluding (5271).

b. General merchandise stores (53).

c. Food stores (54).

d. Auto and home supply stores (5531).

e. Apparel and accessory shops (56).

f. Furniture, home furnishings and equipment stores (57).

g. Eating and drinking places (58).

h. Miscellaneous retail (59) excluding (5983) and (5984).

(5) *Finance, insurance and real estate.* Finance, insurance and real estate including the following:

a. Banking (60).

b. Credit agencies other than banks (61).

c. Security and commodity brokers, dealers, exchanges and services (62).

d. Insurance carriers (63).

e. Insurance agents, brokers and service (64).

f. Real estate (65).

g. Combinations of real estate, insurance, loans and law offices (66).

h. Holding and other investment companies (67).

(6) *Services.* Services including the following:

a. Personal services (72).

b. Business services (73).

c. Automotive repair, service and garages (75), including boats and watercraft.

d. Miscellaneous repair services (76).

e. Motion pictures (78).

f. Amusement and recreation services except motion pictures (79) excluding (7948), (7992) and (7996).

g. Health services (80).

h. Legal services (81).

i. Social services (83).

j. Nonprofit membership organizations (86).

k. Miscellaneous services (89).

(g) *Same—Application procedure.*

(1) Applications for operations permits accompanied by the fee as established by the city shall be filed with the building official. After approval of the operations permit, the applicant, owner or developer, before commencing any work or obtaining any building permits, may be required to make a minimum cash deposit of $250.00. The Council may establish an amount above the minimum deposit at the time the permit is approved and this deposit shall be held in a special developer's escrow account to cover administrative and legal expenses incurred by the city.

(2) Approval of a planned industrial area operations permit shall be by the City Council after recommendation by the city staff.

(3) At the option of the City Council, the city may elect to call a public hearing to solicit public input on an operations permit application. A hearing may be called to review concerns regarding the use or discharge of toxic substances, emissions, special access, parking or loading requirements, noise, storage or other relevant factors.

(h) *Same—Criteria.* The criteria for granting operation permits shall be the same as the criteria listed in section 129-38(a)(1) through (12) for the issuance of conditional use permits.

(Code 1987, § 350.680; Ord. No. 61-1993, § 350.680, 2-23-1994)

Secs. 129-144—129-169. Reserved.

DIVISION 3. OTHER DISTRICTS

Sec. 129-170. Conservation district (CON).

(a) *Purpose (CON).* The purpose of the conservation district is to discourage the infringement of the manmade environment on the community's natural resources. The conservation district includes those areas such as wetlands, marshes, steep slopes, interpretive areas, undeveloped islands, wildlife areas, and other areas that due to environmental conditions, are not generally appropriate for development.

(b) *Permitted uses.* The permitted uses in the CON district are as follows:

(1) Parks.

(2) Nature conservation areas.

(3) Trails.

(4) Overlooks and landings.

(5) Docks.

(Code 1987, § 350.690; Ord. No. 61-1993, § 350.690, 2-23-1994; Ord. No. 110-2000, 7-29-2000)

Secs. 129-171—129-193. Reserved.

ARTICLE V. REQUIREMENTS FOR SPECIFIC USES

DIVISION 1. GENERALLY

Sec. 129-194. Accessory buildings.

(a) No accessory building or structure shall be constructed on any residential lot prior to the time of construction of the principal building to which it is accessory.

(b) No accessory building shall be higher than the principal building in the R districts based on the calculation of the height regulations.

(c) In residential districts, accessory buildings shall be permitted providing that they comply with the regulations found in the district provisions section of this chapter.

(d) In commercial and industrial districts all accessory building setbacks shall equal the principal building setback requirements.

(e) Permitted accessory buildings. Within any residential district, accessory buildings shall be permitted subject to the following restrictions

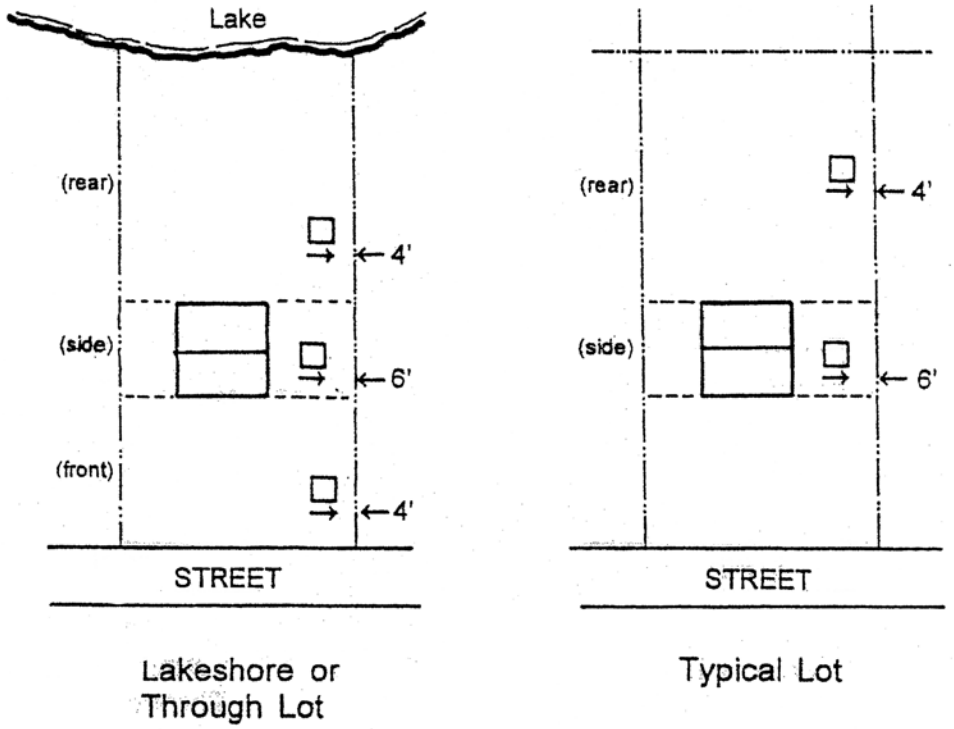
(1) Buildings shall not exceed a total gross floor area of 3,000 square feet or 15 percent of the total lot area whichever is less.

(2) Each individual accessory building shall not exceed 1,200 square feet of gross floor area.

(3) The total number of accessory buildings for lots measuring 10,000 square feet or less shall be two. On lots exceeding 10,000 square feet, accessory buildings shall be limited to a total of three.

(f) Accessory residential building setback requirements.

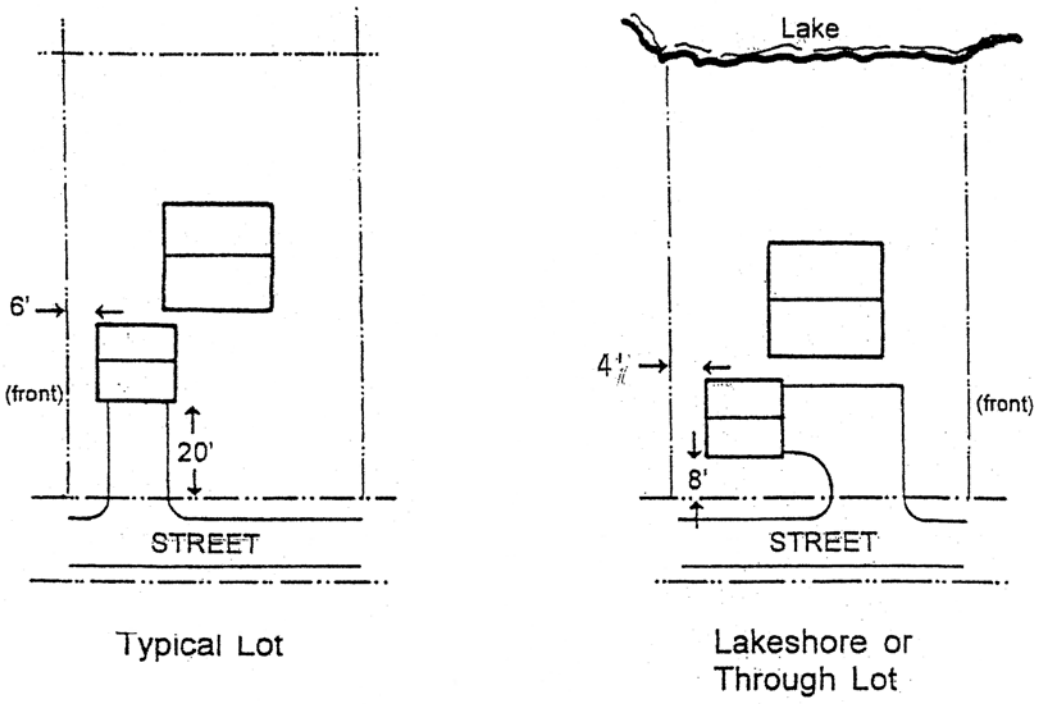
(1) Side yard setbacks. A detached accessory building may be located within four feet of the side lot line in the rear yard with a minimum of a six foot setback in side yard location. On through and lakeshore lots, a detached accessory building may be located within four feet of the side lot line in the front yard. Whenever a garage is so designed that the doors face a side street or side property line, the distance between the doors and the property line shall be 20 feet or more.



Accessory Building Setbacks

(2) Front yard setbacks. All accessory buildings shall meet the same front yard setback

requirements as the principal building, except for lakeshore and through lots. For detached garages on a lakeshore or through lots, a minimum 20-foot front yard setback is required if the garage door opens to the street; an eight-foot front yard setback is required if the garage door opens to the side lot line.



Detached Garage Setbacks

(3) Rear setback. A detached accessory building may be located within four feet of the rear lot line.

(4) Lakeshore setback. Detached accessory buildings must maintain a 50-foot setback from the ordinary high-water line.

(g) Sheds and other buildings less than 120 square feet in floor area shall be subject to a 50-foot setback from the ordinary high-water line of all lakes. Such structures shall also be subject to accessory building setbacks.

(h) Membrane structures.

(1) Permit procedure. No person shall place a membrane structure on private property without first obtaining a permit from the city. Failure to obtain a permit shall be considered to be a violation of this Code and subject to the penalties defined herein.

(2) Fee. The permit fee shall be determined by the City Council.

(3) Special provisions.

a. Membrane covered buildings shall be permitted uses in all residential, commercial and industrial districts and shall be neutral colored (i.e., dark green, tan, brown, etc.).

b. There shall be no more than one membrane-structure per property and such structure shall not exceed 400 square feet.

c. Privately owned membrane structures shall not be placed on public property or

in a location which obstructs traffic visibility.

d. Membrane structure located in commercial and industrial districts shall be placed a minimum setback of three feet on all sides.

e. Membrane structures shall also be included in hardcover calculations.

f. Membrane structures shall be adequately anchored and/or secured to the ground.

g. Membrane structures located in residential zoning districts shall meet the appropriate setbacks for accessory buildings as set forth in this chapter.

(Code 1987, § 350.435; Ord. No. 61-1993, § 350.435, 2-23-1994; Ord. No. 02-2004, 6-6-2004; Ord. No. 03-2005, 2-6-2005)

Sec. 129-195. Planned development areas (PDA).

(a) *Purpose (PDA).* The purpose of this section is to provide a method by which parcels of land in the residential use districts having unusual building characteristics due to subsoil conditions, topographic conditions, elevation of water table, unique environmental considerations, or because of the parcel's unusual shape or location in relationship to lakes, trees or other natural resources requires more unique and controlled platting techniques to protect and promote the quality of life in the city.

(b) *Standards and regulations for planned development areas (PDA).* The owner of any tract of land in the residential district may submit to the City Council for approval, a plan for the use and development of such a tract of land as a PDA by making application for a conditional use permit authorizing completion of the project according to the plan. The plan for the proposed project shall conform to the requirements of the use district within which the land is located except as hereinafter modified.

(1) The tract of land for which a project is proposed and a permit requested shall not be less than one acre.

(2) The application for the conditional use permit shall include a detailed preliminary plan, and shall be submitted in complete conformance with the city subdivision regulations or with all variations detailed and explained. Variations to the requirements of chapter 121, pertaining to subdivisions may be approved by the City Council upon a showing that the public health, safety, and welfare will not be adversely affected and further that the development plan will not have an adverse effect on adjacent properties. All variances must be so noted on the preliminary plan at the time of application.

(3) The number of dwelling units proposed for the entire site shall not exceed the total number permitted under the density control provision for the use district within which the land is located.

(c) The density in the plan shall not exceed the maximum for the zoning district.

(d) All housing types included as permitted uses in the residential districts may be included in the PDA. Each lot as shown on the plan shall have indicated on it the maximum number of dwelling units to be permitted within a single building.

(e) Open space and park land dedication or cash in lieu thereof pursuant to the requirements of section 121-121 shall be required. The land that is to be set aside as open space shall be clearly indicated on the plan. Provisions for recreational area and for continual maintenance of the areas not dedicated and accepted by the city shall be required.

(f) The concept of cluster platting or zero lot line development will be reflected by the PDA and must be shown on the plan and subject to all conditions imposed by the conditional use permit.

(g) No conveyance of property within the PDA shall take place until the property is platted in conformance with the city subdivision regulations and Minn. Stats. § 462.358 or unless specifically waived in accordance with Section 121-3. All bylaws, homeowners' association articles of incorporation, and protective covenants must be approved by the City Attorney and filed with the record plat.

(h) Approval of a PDA conditional use permit shall be by the City Council after recommendation by the city Planning Commission and all improvements required by chapter 121 shall be constructed by the developer at its sole cost. The applicant must provide the city with a surety bond or other financial guarantee to guarantee the construction of all improvements required in accordance with city specifications.

(i) The land utilized by public utilities, such as easements for major facilities, (electrical transmission lines, sewer lines, drainage easement and water mains), where such land is not available to the owner or developer for development because of such elements, shall not be considered as part of the gross acreage in computing the maximum number of lots or density that may be created under the procedure described in this chapter.

(j) The maximum number of lots that may be approved shall be computed by subtracting, from the total gross acreage available for development under this planned development area procedure, the actual amount of street right-of-way required and that land in subsection (i) of this section which is not available, and by dividing the remaining area by the minimum lot area requirements of the existing R districts in which the development is to be located.

(k) After approval of the conditional use permit, the applicant, owner or developer, before commencing any work or obtaining any building permits shall make a minimum cash deposit in an amount established by the city. The Council shall establish the amount required for deposit at the time the planned development area is approved and this deposit shall be held in a special developer's escrow account and shall be credited to the applicant, owner, or developer. Engineering, planning, and legal expenses incurred by the city in plan approval, office and field checking, checking and setting grade and drainage requirements, general supervisions, staking, inspection, drafting as-built drawings and all other engineering services performed in the processing of said development, and all administrative and legal expenses in examining title to the property and in reviewing all documents described in subsection (h) of this section for the land being developed shall be charged to the aforementioned account and shall be credited to the city for the payment of these expenses. If at any time it appears that a deficit will occur in any developer's escrow account as determined by the City Manager, said officials shall recommend to the Council that an additional deposit is required and the Council may require that the applicant, owner, or developer shall deposit additional funds in the developer's escrow account. The City Manager or clerk shall itemize all services and materials billed to any developer's escrow account. The applicant, owner or developer making the deposits in the developer's escrow account shall, upon request, be furnished a copy of said itemized charges and any balance remaining in the account upon completing the project shall be returned to the depositor by the clerk after all claims and charges thereto have been paid.

(Code 1987, § 350.460; Ord. No. 61-1993, § 350.460, 2-23-1994; Ord. No. 10-2006, 5-7-2006; Ord.No.06-2010, 10-24-2010)

Sec. 129-196. Requirements applicable to all residential districts.

(a) *Lot coverage.* Impervious surface coverage of lots in residential zones shall not exceed 30 percent of the lot area. On existing lots of record, impervious coverage may be permitted to up to a maximum of 40 percent consistent with the provisions identified in section 129-385(g)(2)a.

(b) *Swimming pools and hot tubs.* Within any residential district, swimming pools and hot tubs shall be permitted subject to the following restrictions:

(1) *Swimming pools.* Swimming pools having a water depth of two feet or more which are operated for the enjoyment and convenience of the residents of the principal use and their guests are permitted provided that the following conditions are met:

a. Swimming pools shall be subject to the following setbacks:

1. The side yard setback is ten feet.

2. The corner lots, from the side street setback is 15 feet.

3. The rear yard setback is 15 feet.

4. Lakeshore, from the ordinary high-water line setback is 50 feet.

5. From any structure on same lot the setback is ten feet.

6. From principal building on an adjoining lot the setback is 20 feet.

b. Private swimming pools are prohibited in the front portion of residential parcels. The front portion includes the area extending across the entire width of the lot and situated between the front line of the principal building and the front lot line.

c. The swimming pool shall be entirely enclosed by a protective fence or other permanent structure not less than five feet nor more than six feet in height. Such protective enclosures shall be maintained by locked gates or entrances when the pool is not tended by a qualified and responsible person.

(2) *Hot tubs.* Outdoor hot tubs shall comply with subsections (b)(1)a and b of this section with the exception that the setback from any structure on the same lot shall not apply. Furthermore, all outdoor hot tubs shall be required to either contain surrounding decking with appropriate guardrails or shall be secured by a locked cover when not in use.

(Code 1987, § 350.645; Ord. No. 61-1993, § 350.645, 2-23-1994; Ord. No. 71-1994, 10-31-1994)

Sec. 129-197. Required yards and open space.

(a) No yard or other open space shall be reduced in area or dimension so as to make such yard or other open space less than the minimum required by this chapter, and if the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced.

(b) No required yard or other open space allocated to a building or dwelling group shall be used to satisfy yard, other open space, or minimum lot area requirements for any other building.

(c) The following shall not be considered to be encroachments on yard requirements:

(1) Chimneys, window air conditioners, belt courses, leaders, sills, pilasters, lintels, ornamental features, mechanical devices, cornices, eaves, and the like, provided they do not extend more than two feet into the required yard area. Gutters are allowable encroachments and are not subject to setback.

(2) Uncovered porches, stoops or similar entrance structures not exceeding 32 square feet which do not extend in elevation above the height of the ground floor elevation of the principal building, and steps that do not extend to a distance of less than two feet from any lot line.

(3) Decks, balconies, and the like, attached to the principal building which extend in elevation above the height of the ground floor elevation of the principal building; and decks, balconies, and the like, detached from the principal building and exceeding 30 inches in height above the surrounding grade; provided that such structures described in this subsection do not extend within ten feet of the rear lot line or extend beyond side yard and front yard accessory building setbacks. On lakeshore lots, such structures shall comply with the lakeshore setback of the principal structure.

(4) Detached decks or similar structures which do not extend above 30 inches in elevation above the height of the surrounding grade and do not extend to a distance of less than two feet from any lot line. On lakeshore lots, such structures shall comply with the lakeshore setback of the principal structure.

(5) Yard lights and name plate signs for single-family and two-family dwellings, lights for illuminating parking areas, loading areas or yards for safety and security purposes, provided the direct source of light is not visible from the public right-of-way or adjacent residential property. Such fixtures may be located within five feet of the front lot line.

(6) Fire escapes not exceeding three feet in width in side or rear yards only.

(7) Recreational equipment such as a swing set, slide, climbing apparatus, sandbox and the like,

clotheslines, picnic tables and other equipment accessory to and associated with the residential use of property.

(8) Bay windows; provided the encroachment within the yard area does not exceed eight square feet and provided the setback of the principal wall conforms to district setback requirements.

(9) Retaining walls shall be considered to be an allowable encroachment; provided that a building permit, to include all required information, is submitted for any retaining wall that exceeds four feet in height.

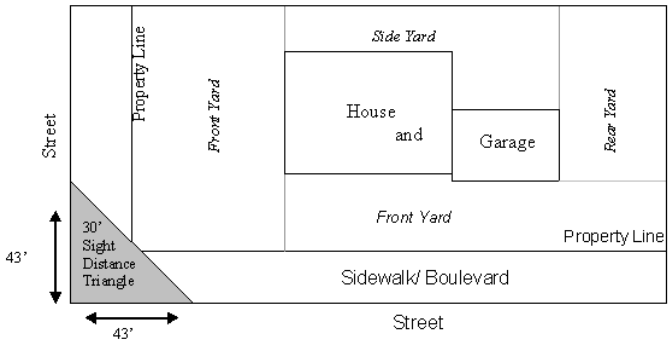
(10) The list of items referenced in City Code Sec. 129-2 (Definitions) which do not qualify as a "structure" shall be considered to be allowable encroachments unless another section of he code requires a setback.

(d) Buildings may be excluded from side yard requirements if party walls are utilized or if the adjacent buildings are planned to be constructed as an integral structure and a conditional use permit is secured.

(e) Corner lots. Lots which abut on more than one street shall provide the required front yards along every street except for lots of record which shall provide a side yard setback abutting the street based on the lot width as follows: In cases where the street side yard setback established above is greater than the required front yard setback, the street side yard setback shall be the same as the front yard setback.

Minimum side yard setback	
Lot width (feet)	*On corner lots (feet)*
40—50	10
51—80	20
81 or more	30

The Sight Distance Triangle



(f) Where adjoining structures have a shorter setback from that required, the front setback of a new structure shall conform to the average of the setback observed by the adjoining houses on either side, but not closer than 20 feet.

(g) In all districts, structures shall be 50 feet or more from the ordinary high-water mark. No structure, except piers and docks, shall be placed at an elevation such that the lowest floor, including basement floors, is less than the regulatory flood protection elevation.

(h) No building permit shall be issued for any lot or parcel which does not abut a dedicated, improved public street.

(i) In residential districts, street frontages created by the existence of fire lanes having a width not exceeding 15 feet shall be considered side yards or rear yards, as appropriate, and subject to applicable district setbacks.

(j) In residential districts, street frontages created by the existence of alleys, such alleys having a total width not exceeding 15 feet, shall be considered side yards or rear yards, as appropriate, and subject to

applicable district setbacks.

(k) In residential districts, unimproved street frontages having a width exceeding 15 feet, shall be considered side yards or rear yards, as appropriate. The minimum side setback shall be ten feet.

(Code 1987, § 350.440; Ord. No. 61-1993, § 350.440, 2-23-1994; Ord. No. 15-2005, 9-4-2005; Ord. No. 07-2008, 5-13-08; Ord.11-2008, 10-19-08; Ord. 01-2010, 5-23-10)

Sec. 129-198. Access drives and access.

(a) Access drives shall be no closer than one foot to any side or rear lot line and shall be a hard surface as approved by the city engineer and in accordance with section 121-146(13).

(b) The number and types of access drives onto major streets shall be limited to a single access unless approved by the city engineer.

(c) Access drives onto county roads shall require a review by the county engineer. The county engineer shall determine the appropriate location, size, and design of such access drives and may limit the number of access drives in the interest of public safety and efficient traffic flow.

(d) Access drives to principal structures which traverse wooded, steep, or open field areas shall be constructed and maintained to a width and base material depth sufficient to support access by emergency vehicles. The city shall review all access drives (driveways) for compliance with accepted community access drive standards. All driveways shall have a minimum width of ten feet and a maximum width of 24 feet with a pavement strength capable of supporting any emergency vehicles.

(e) All lots or parcels shall have direct adequate physical access for emergency vehicles along the frontage of the lot or parcel from an existing dedicated improved public roadway.

(Code 1987, § 350.445; Ord. No. 61-1993, § 350.445, 2-23-1994; Ord. No. 07-2006, 3-26-2006)

Sec. 129-199. Residential minimum floor area requirements.

The following minimum requirements shall be applied to all new residential dwelling construction:

(1) For single-family detached dwellings the minimum requirement is 840 square feet per dwelling.

(2) For two-family dwellings the minimum requirement is 800 square feet per dwelling.

(3) For twin home dwellings the minimum requirement is 840 square feet per dwelling.

(4) Townhouse dwellings:

a. For one-bedroom units the minimum requirement is 760 square feet above grade.

b. For two-bedroom units the minimum requirement is 880 square feet above grade.

c. For three-bedroom units the minimum requirement is 960 square feet above grade.

d. For each additional bedroom add 120 square feet.

(5) Multiple-family dwellings:

a. For efficiency units the minimum requirement is 480 square feet minimum.

b. For one-bedroom units the minimum requirement is 640 square feet minimum.

c. For two-bedroom units the minimum requirement is 760 square feet minimum.

d. For three or more bedroom units add 100 square feet per bedroom to requirements for a two-bedroom unit.

(Code 1987, § 350.450; Ord. No. 61-1993, § 350.450, 2-23-1994)

Sec. 129-200. Essential services and buildings.

(a) Essential services and public utilities, except buildings, shall be permitted as authorized and regulated by state law and this Code, it being the intention that such are exempt from the application of this chapter when located within public easements.

(b) Essential service buildings. Essential service buildings are not subject to the lot area, lot width, coverage and setback requirements contained in this chapter. Essential service buildings are conditional uses in all districts; and may not be constructed or substantially renovated unless a conditional use permit is issued in accordance with the provisions of this chapter. The city may place design, size, location and coverage restrictions on any conditional use permit, and may require that the coverage and setbacks conform as close as practical to those otherwise required in the district.

(Code 1987, § 350.455; Ord. No. 61-1993, § 350.455, 2-23-1994; Ord. No. 14-2002, 7-7-2002)

Sec. 129-201. Docks serving commercial property.

(a) Docks to serve property located in district B-1, B-2 or B-3 shall be permitted only after the issuance of a conditional use permit according to section 129-38.

(b) Any conditional use permit granted by the Council shall be conditioned as follows:

(1) The residential property on which dockage is to be located and the commercial property served shall be in common ownership and shall be located within 300 feet of the property line of the commercial property.

(2) The mooring of boats at such dock shall be limited to a maximum of four hours.

(3) No gas, oil or other product may be sold from the dock and no servicing of boats will be permitted.

(4) One sign for identification will be allowed but it shall not exceed a total of six square feet in size.

(5) Ingress and egress from the residential lot shall be restricted to the property held under common ownership and adequate safeguards shall be provided so that persons docking will not trespass on private property or on any public property except for properly designated streets or sidewalks.

(6) The owner shall be required to meet and comply with all the standards and requirements of the Lake Minnetonka conservation district.

(Code 1987, § 350.465; Ord. No. 61-1993, § 350.465, 2-23-1994)

Sec. 129-202. State environmental quality regulation.

It is the intent of this chapter to comply with all state regulations relating to environmental concerns. In all administrative review procedures, at the time of application, the planning staff shall determine the need for the preparation of an environmental assessment according to such regulations. If the environmental assessment is prepared, all other action on applications shall cease pending ruling from the state.

(Code 1987, § 350.470; Ord. No. 61-1993, § 350.470, 2-23-1994)

Sec. 129-203. Fences.

Fencing shall be permitted in all zones subject to the following:

(1) *General requirements.*

a. No person shall erect, construct or place any fence without first making an application for and securing a building permit.

b. The building official may require fence permit applicants to establish property boundary lines by a survey completed by a registered land surveyor. In all cases, the city shall not be liable for the establishment or definition of property lines.

c. Chainlink fences not exceeding ten feet in height shall be permitted to enclose tennis courts.

(2) *Construction and maintenance.*

a. All fences shall be constructed of durable, weather resistant materials and properly anchored. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair, danger or constitute a nuisance. Fences in a state of disrepair or deemed to be a nuisance may be abated by the city by proceedings taken under Minn. Stats. ch. 429, and the cost of abatement, including administration expenses, may be levied as a special assessment against the property upon which the fence is located.

b. Electric fences and barbed wire fences are prohibited except that barbed wire may be used in industrial districts as an anti-vaulting measure on top of a fence that equals six feet in height. In such cases, barbed wired shall not exceed the height of one foot above the top of the fence.

c. In all districts, fences shall consist of materials comparable in grade and quality to the following:

1. Chainlink;
2. Wood;
3. Wrought iron;
4. Vinyl;
5. Plastic;
6. Decorative masonry; or
7. Other acceptable similar material, constructed from commercially available materials.

Wooden fences shall not be constructed from twigs, branches, doors, siding or other wooden products originally intended for other purposes.

d. Fences shall in no way detain or inhibit the flow of surface water drainage to and from abutting properties.

e. Front yard fences shall be designed and constructed in such a manner so as not to unreasonably obscure the sight distance of vehicles accessing the street from driveways on the subject property or from adjacent properties.

f. Fence heights shall be measured from the adjoining natural ground. Fences installed on top of retaining walls shall be limited to a maximum of 42 inches in residential zones.

g. All fenced areas shall be accessible through at least one gate having a

minimum width of three feet.

h. All chainlink fences shall have a top rail, barbed ends shall be placed at the bottom of the fence and posts shall be spaced at intervals not to exceed eight feet. For wooden fences, post spacing shall not exceed eight feet.

i. Fences shall be installed such that the finished side faces abutting properties. The finished side shall be the side that provides maximum coverage of posts and stringers. Board-on-board, basket-weave fences, and similar design shall be deemed to have two finished sides.

(3) *Residential district fences.*

a. Front yard fences may be solid or open and shall not exceed four feet in height.

b. Rear and side yard fences located behind the front yard setback line may be solid or open and shall not exceed six feet in height.

c. Fences shall be required around swimming pools in conformance with section 129-196(b)(1)c.

(4) *Business and industrial district fences.*

a. Fences in industrial districts shall not exceed six feet in height.

b. Fences in commercial districts not exceeding four feet in height may be permitted in front of the front building line as established by the primary structure on the lot. Fences in commercial districts not exceeding six feet in height are permitted at or behind the front building line as established by the primary structure on the lot.

c. Fences not exceeding six feet in height may be permitted in front of the front building line as established by the primary structure on the lot when required for screening of adjacent residential uses or as required for other provisions of this chapter including, but not limited to, dumpsters, off-street parking and loading areas or as required by other rules and/or regulations.

(5) *Shoreland district lakeshore setback fences.* Fences to be located within any portion of the 50-foot principal structure lakeshore setback shall not exceed a maximum of three feet in height and shall maintain a see-through visibility level equal to that of a chainlink type fence. All fence materials must be treated so as to blend with the natural surroundings of the setback area.

(Code 1987, § 350.475; Ord. No. 61-1993, § 350.475, 2-23-1994; Ord. No. 15-2005, 9-4-2005; Ord. No. 11-2007, 9-25-2007)

Sec. 129-204. Temporary Health Care Dwellings

Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Mound opts-out of the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

(Ord. No. 09-2016, 8-28-2016)

Secs. 129-205—129-229. Reserved.

DIVISION 2. TELECOMMUNICATIONS FACILITIES

Sec. 129-230. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antenna support structure means a building, athletic field lighting, water tower, or other structure, other than a tower, which can be used for location of telecommunications facilities.

Applicant means a person who applies for a permit to develop, construct, build modify or erect a tower under this section.

Application means the process by which the owner of a plot of land within the city submits a request to develop, construct, build, modify or erect a tower upon that land.

Engineer means an engineer licensed by the state.

Stealth means designed to blend into the surrounding environment; examples of stealth facilities include, without limitation, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and telecommunications towers designed to appear other than as a tower, such as light poles, power poles, and trees.

Telecommunications facilities means cables, wires, lines, wave guides, antennas or any other equipment or facilities associated with the transmission or reception of telecommunications located or installed on or near a tower or antenna support structure. The term "telecommunication facilities" does not include:

(1) A satellite earth station antenna two meters in diameter or less located in an industrial or commercial district;

(2) A satellite earth station antenna one meter or less in diameter, wherever located; or

(3) A tower.

Telecommunications tower or *tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade that supports telecommunications facilities; the term "telecommunication tower" does not include amateur radio operations equipment licensed by the Federal Communications Commission.

(Code 1987, § 350.1305)

Sec. 129-231. Findings and purpose.

(a) The City Council finds:

(1) The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission exclusive jurisdiction over the regulation of the environmental effects of radio frequency emissions from telecommunications facilities and the regulation of radio signal interference among users of the radio frequency spectrum.

(2) Consistent with the Act, the regulation of towers and telecommunications facilities in the city will not have the effect of prohibiting any person from providing wireless telecommunications services.

(b) The general purpose of this division is to regulate the placement, construction, and modification of telecommunication towers and facilities in order to protect the health, safety and welfare of the public, while not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city. In addition, this division recognizes the contractual control for the purpose of preserving public health, safety, and welfare that can be exercised over telecommunications facilities when those facilities are located on property owned or controlled by governmental entities. Specifically, the purposes of this division are:

(1) To regulate the location of telecommunication towers and facilities;

(2) To protect residential areas and land uses from potential adverse impacts of telecommunication towers and facilities;

(3) To minimize adverse visual impacts of telecommunication towers and facilities through design, site, landscaping, and innovative camouflaging techniques;

(4) To promote and encourage shared use and collocation of telecommunication towers and antenna support structures;

(5) To avoid damage to adjacent properties caused by telecommunication towers and facilities by ensuring that those structures are soundly and carefully designed, constructed, modified, maintained and promptly removed when no longer used or when determined to be structurally unsound;

(6) To ensure that telecommunication towers and facilities are compatible with surrounding land uses; and

(7) To facilitate the provision of wireless telecommunications services to the residents and businesses of the city in an orderly fashion.

(Code 1987, § 350.1301)

Sec. 129-232. Development of towers; approvals required.

(a) *General construction prohibition.* A tower may not be constructed in any zoning district unless such tower is a conditional or permitted use in the zoning district in which construction will take place.

(b) *Conditional use permit required.* A tower may not be constructed in any zoning district unless a conditional use permit has been issued by the City Council if the tower is a conditional use in the zoning district in which construction will take place.

(c) *Building permit required.* A tower may not be constructed in any zoning district unless a building permit has been issued by the building official.

(d) *City property.* The city may authorize the use of city property for towers in accordance with the procedures of this chapter. The city has no obligation to allow the use of city property for this purpose.

(e) *Zoning districts.* A tower is not a permitted use in any zoning district. Towers shall be allowed as a conditional use in the following zoned areas:

(1) Light industrial (I-1) and planned industrial area (PIA) districts.

(2) Publicly owned or operated land in residential and commercial districts.

(Code 1987, § 350.1305; Ord. No. 102-1999, 2-21-1999)

Sec. 129-233. Application procedure.

(a) A person desiring to construct a tower must submit an application for a building permit and, if applicable, for a conditional use permit, to the planning staff.

(b) An application to develop a tower must include:

(1) Name, address, and telephone number of the applicant;

(2) Name, address, and telephone numbers of the owners of the property on which the tower is proposed to be located;

(3) Written consent of the property owner to the application;

(4) Written evidence from an engineer that the proposed structure meets the structural requirements of this Code;

(5) Written information demonstrating the need for the tower at the proposed site in light of the existing and proposed wireless telecommunications networks to be operated by persons intending to place telecommunications facilities on the tower;

(6) A copy of relevant portions of a lease signed by the applicant and property owner, requiring the applicant to remove the tower and associated telecommunications facilities upon cessation of operations on the leased site, or, if a lease does not yet exist, a written agreement to include such a provision in the lease to be signed; and

(7) An application fee established by the city.

(Code 1987, § 350.1315

Sec. 129-234. Performance standards.

(a) *Collocation capability.* Unless the applicant presents clear and convincing evidence to the City Council that collocation is not feasible, a new tower may not be built, constructed or erected in the city unless the tower is capable of supporting at least two telecommunications facilities comparable in weight, size, and surface area to each other.

(b) *Setback requirements.* A tower must comply with the following setback requirements:

(1) Towers shall meet the principal structure setbacks of the underlying zoning district provided the tower does not encroach upon any easement.

(2) Towers shall not be located between a principal structure and a public street.

(3) A tower's setback may be reduced or its location in relation to a public street varied, if the City Council reasonably deems it necessary to allow better site integration.

(Code 1987, § 350.1320; Ord. No. 102-1999, 2-21-1999)

Sec. 129-235. Engineer certification.

Towers must be designed and certified by an engineer to be structurally sound and in conformance with the state building code, and any other standards set forth in this Code.

(Code 1987, § 350.1325)

Sec. 129-236. Height restriction.

A tower may not exceed 125 feet in height. Measurement of tower height must include the tower structure itself, the base pad, and any telecommunications facilities attached thereto. Tower height is measured from grade. Measurement of antenna support structure height must include the structure itself and any telecommunications facilities attached thereto. This provision, however, is not a separate grant of authority to construct an antenna support structure or a grant that such a structure may be any particular height.

(Code 1987, § 350.1330; Ord. No. 102-1999, 2-21-1999)

Sec. 129-237. Lighting.

Towers may not be artificially lighted except as required by the Federal Aviation Administration. At time of construction of a tower, in cases where there are residential uses located within a distance that is three times the height of the tower from the tower, dual mode lighting must be requested from the Federal Aviation Administration. Notwithstanding this provision, the city may approve the placement of an antenna on an existing or proposed lighting standard; provided the antenna is integrated with the lighting standard.

(Code 1987, § 350.1335)

Sec. 129-238. Exterior finish.

Towers not requiring Federal Aviation Administration painting or marking must have an exterior finish as approved in the site plan.

(Code 1987, § 350.1340)

Sec. 129-239. Fencing.

Fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities must be constructed in accordance with the applicable fencing requirements in the zoning district where the tower or antenna support structure is located, unless more stringent fencing requirements are required by Federal Communications Commission regulations.

(Code 1987, § 350.1345)

Sec. 129-240. Landscaping.

Landscaping on parcels containing towers, antenna support structures or telecommunications facilities must be in accordance with landscaping requirements as approved in the site plan. Utility buildings and structures accessory to a tower must be architecturally designed to blend in with the surrounding environment and to meet such setback requirements as are compatible with the actual placement of the tower. Ground-mounted equipment must be screened from view by suitable vegetation, except where a design of nonvegetative screening better reflects and complements the character of the surrounding neighborhood.

(Code 1987, § 350.1350)

Sec. 129-241. Accessory buildings and equipment.

No more than one accessory building is permitted per tower. Accessory buildings may be no more than 200 square feet in size. Telecommunications facilities not located on a tower or in an accessory building must be of stealth design.

(Code 1987, § 350.1355)

Sec. 129-242. Security.

Towers must be reasonably posted and secured to protect against trespass. All signs must comply with applicable sign regulations.

(Code 1987, § 350.1360)

Sec. 129-243. Design.

Towers must be of stealth design.

(Code 1987, § 350.1365)

Sec. 129-244. Nontower facilities.

Telecommunications facilities are permitted only as follows:

(1) Telecommunications facilities are a conditional accessory use in the central business district (B-1), general business district (B-2), and neighborhood business district (B-3); provided that the owner of such a telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:

a. The height from grade of the telecommunications facilities and antennas support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;

b. The antenna support structure and telecommunications facilities comply with the state building code; and

c. The telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof, but that do not protrude more than six inches from the side of the antenna support structure.

(2) Notwithstanding anything to the contrary contained in this chapter, telecommunications facilities are a permitted accessory use on antenna support structures owned or otherwise under the physical control of the city, a school district, or the state or federal government provided a building permit has been issued by the City Council and provided further that the owner of such a telecommunications facility, by written certification to the building official, establishes the following facts at the time plans are submitted for a building permit:

a. The height from grade of the telecommunications facilities and antennas support structure does not exceed the maximum height from grade of the antenna support structure by more than 20 feet;

b. The antenna support structure and telecommunications facilities comply with the state building code; and

c. Telecommunications facilities located above the primary roof of an antenna support structure are set back one foot from the edge of the primary roof for each one foot in height above the primary roof of the telecommunications facilities. This setback requirement does not apply to antennas that are mounted to the exterior of antenna support structures below the primary roof, but that do not protrude more than six inches from the side of the antenna support structure.

(Code 1987, § 350.1370; Ord. No. 102-1999, 2-21-1999)

Sec. 129-245. Removal of towers.

Abandoned or unused towers and associated above-ground facilities must be removed within twelve months of the cessation of operations of the telecommunications facility at the site unless an extension is approved by the City Council. Any tower and associated telecommunications facilities that are not removed within twelve

months of the cessation of operations at a site are declared to be public nuisances and may be removed by the city and the costs of removal assessed against the property pursuant to state law and this Code.

(Code 1987, § 350.1375)

Sec. 129-246. Shoreland protection.

To the extent that any conflict exists between any provision of this division and any provision of chapter 129, article VIII, pertaining to shoreland protection, the more restrictive provision shall apply.

(Code 1987, § 350.1380)

Sec. 129-247. Additional requirements.

(a) *Inspections.* The city may conduct inspections at any time, upon reasonable notice to the property owner and the tower owner to inspect the tower for the purpose of determining if it complies with the state building code and other construction standards provided by this Code, federal and state law. The expense related to such inspections will be borne by the property owner. Based upon the results of an inspection, the building official may require repair or removal of a tower.

(b) *Evaluation and monitoring.* As a condition of approval for telecommunication facilities the applicant shall reimburse the city for its costs to retain outside expert technical assistance to evaluate any aspect of the proposed site of telecommunications facilities, including, but not limited to, other possible sites within the city. The owner of a telecommunications facility shall provide the city with current, technical evidence of compliance with FCC radiation emission requirements, annually or more frequently at the city's reasonable request. If the owner does not promptly provide the city with satisfactory technical evidence of FCC compliance, the city may carry out tests to ensure FCC radiation compliance using a qualified expert. The owner shall reimburse the city for its reasonable costs in carrying out such compliance testing.

(c) *Maintenance.* Towers must be maintained in accordance with the following provisions:

(1) Tower owners must employ ordinary and reasonable care in construction and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public.

(2) Tower owners must install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in compliance with the requirements of the National Electric Safety Code and all Federal Communications Commission, state, and local regulations, and in such a manner that they will not interfere with the use of other property.

(3) Towers, telecommunications facilities, and antenna support structures must be kept and maintained in good condition, order, and repair.

(4) Maintenance or construction on a tower, telecommunications facilities or antenna support structure must be performed by qualified maintenance and construction personnel.

(5) Towers must comply with radio frequency emissions standards of the Federal Communications Commission.

(6) If the use of a tower is discontinued by the tower owner, the tower owner must provide written notice to the city of its intent to discontinue use and the date when the use will be discontinued.

(Code 1987, § 350.1380; Ord. No. 96-1998, 4-18-1998; Ord. No. 102-1999, 2-21-1999)

Sec. 129-248. Variances.

(a) *Initial criteria.* The City Council may grant a variance to the setback separation or buffer requirements, and maximum height provision of this subsection based on the criteria set forth in section 129-39.

(b) *Additional criteria.* In addition to consideration of a variance based on the criteria set forth in section 129-39 into consideration, the City Council may also grant a variance by considering the requirements imposed by the Act and showing by the applicant with written or other satisfactory evidence that:

(1) The location, shape, appearance or nature of use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located;

(2) The variance will not create a threat to the public health, safety or welfare;

(3) In the case of a requested modification to the setback requirement, the size of plat upon which the tower is proposed to be located makes compliance impossible, and the only alternative for the applicant is to locate the tower at another site that poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land;

(4) In the case of a request for modification of separation requirements, if the person provides written technical evidence from an engineer that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage needs of the applicant's wireless communications system and if the person agrees to create approved landscaping and other buffers to screen the tower from being visible to the residential area;

(5) In the case of a request for modification of the maximum height limit, that the modification is necessary to:

a. Facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or

b. To meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an engineer.

(Code 1987, § 350.1390)

Sec. 129-249. Failure to comply.

(a) *City's right to revoke.* If the permittee fails to comply with any of the terms imposed by the conditional use permit, the city may impose penalties or discipline for noncompliance, which may include revocation of the permit, in accordance with the following provisions:

(b) *Procedure.* Except as provided in subsection (c) of this section, the imposition of any penalty shall be preceded by:

(1) Written notice to the permittee of the alleged violation;

(2) The opportunity to cure the violation during a period not to exceed 30 days following receipt of the written notice; and

(3) A hearing before the City Council at least 15 days after sending written notice of the hearing.

The notices contained in subsections (b)(1) and (3) of this section may be contained in the same notification. The hearing shall provide the permittee with an opportunity to show cause why the permit should not be subject to discipline.

(c) *Exigent circumstances.* If the city finds that exigent circumstances exist requiring immediate permit revocation, the city may revoke the permit and shall provide a post-revocation hearing before the City Council not more than 15 days after permittee's receipt of written notice of the hearing. Following such hearing, the City Council may sustain or rescind the revocation, or may impose such other and further disciplines as it deems appropriate.

(d) *Record.* Any decision to impose a penalty or other discipline shall be in writing and supported by substantial evidence contained in a written record.

(Code 1987, § 350.1395)

Secs. 129-250—129-265. Reserved.

DIVISION 3. ADULT ESTABLISHMENTS*

***State law reference—**Adult entertainment establishments, Minn. Stats. § 617.242.

Subdivision I. In General

Sec. 129-266. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult establishment means:

(1) Any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas; or

(2) Any business that engages in any adult use as defined in this division.

Adult use means any of the activities and businesses described in this definition.

(1) *Adult body painting studio* means an establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or nontransparent, to the body of a patron when the person is nude.

(2) *Adult bookstore* means an establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tapes, videotapes, movies, DVDs or motion picture films if a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas.

(3) *Adult cabaret* means a business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on:

a. The depiction of nudity, specified sexual activities or specified anatomical areas; or

b. The presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

(4) *Adult companionship establishment* means a business or establishment that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(5) *Adult conversation/rap parlor* means a business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(6) *Adult health/sport club* means a health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(7) *Adult hotel or motel* means a hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(8) *Adult massage parlor/health club* means a massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(9) *Adult minimotion picture theater* means a business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(10) *Adult modeling studio* means a business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.

(11) *Adult motion picture arcade* means any place to which the public is permitted or invited where coin- or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(12) *Adult motion picture theater* means a motion picture theater with a capacity of 50 or more persons that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

(13) *Adult novelty business* means an establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis on material depicting or describing specified sexual activities or specified anatomical areas, or items, merchandise or devices that simulate specified sexual activities or specified anatomical areas, or are designed for sexual stimulation.

(14) *Adult sauna* means a sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(15) *Adult steam room/bathhouse facility* means a building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Nude or *specified anatomical areas* means:

(1) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

(1) The following whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, the use of excretory functions in the context of a sexual relationship, anilingus, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pedophilia, piquerism, or zooerastia;

(2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

(3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;

(4) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;

(5) Situations involving persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;

(6) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or

(7) Human excretion, urination, menstruation, or vaginal or anal irrigation.

Substantial or significant portion means 25 percent or more.

(Code 1987, § 350.1405; Ord. No. 11-2003, 12-7-2003)

Sec. 129-267. Purpose and intent.

(a) *Findings of the City Council.* Studies conducted by the state attorney general, the American Planning Association and cities such as St. Paul, Minneapolis and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin, have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council makes the following findings regarding the need to regulate adult establishments. The findings are based upon the experiences of other cities where such businesses have located, as studied by city staff. Based on these studies and findings, the City Council concludes:

(1) Adult establishments have adverse secondary impacts of the types set forth in this subsection.

(2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements.

(3) It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the city.

(4) The provisions of Minn. Stats. § 462.357, allows the city to adopt regulations to promote the public health, safety, morals and general welfare.

(5) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.

(6) Adult establishments can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime prevention programs and law enforcement services.

(7) Adult establishments can be used as fronts for prostitution and other criminal activity.

The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures.

(8) Adult establishments can increase the risk of exposure to communicable diseases including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.

(9) Adult establishments can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.

(10) The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed herein.

(b) *Purpose.* It is the purpose of this division to regulate adult establishments to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

(1) Prevent additional criminal activity within the city;

(2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

(3) To locate adult establishments away from residential areas, schools, churches, libraries, parks, and playgrounds;

(4) Prevent the concentration of adult establishments within certain areas of the city.

(c) *Provisions not meant to limit First Amendment.* The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult oriented materials. Similarly, it is not the intent nor effect of this division to restrict or deny access by adults to adult oriented materials protected by the First Amendment or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

(Code 1987, § 350.1400; Ord. No. 11-2003, 12-7-2003)

Sec. 129-268. Application of this division.

(a) Except as this division specifically provides, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this division.

(b) No adult establishment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the state, or the United States of America. Nothing in this division shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes or ordinances, including, but not limited to, statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.

(Code 1987, § 350.1410; Ord. No. 11-2003, 12-7-2003)

Sec. 129-269. Inspection.

(a) *Access.* An applicant or licensee shall permit health officials, representatives of the Police Department, Fire Department, and building official, to inspect the premises of an adult establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.

(b) *Refusal to permit inspections.* A person who operates an adult establishment or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department, and building official at any time it is occupied or

open for business. Refusal to permit inspections may result in nonrenewal, suspension or revocation of the license as provided in sections 129-289 and 129-290.

(c) *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. Temporary habitation is defined as a period of time of at least 12 hours.

(d) *Records.* The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase price or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the city upon request.

(Code 1987, § 350.1440; Ord. No. 11-2003, 12-7-2003)

Sec. 129-270. Location.

(a) *Permitted use.* Adult establishments are permitted uses in the B-1 central business district, the PED pedestrian planned unit development district and the I-1 light industrial district.

(b) *Restrictions.*

(1) An adult establishment must be located at least 200 radial feet, as measured in a straight line from the closest point of the proposed adult establishment structure to the property line of any:

a. Residential property;

b. School;

c. Church or place of worship;

d. City-owned facility;

e. Park or recreational property;

f. Child day care facility;

g. Adult establishment.

(2) If the proposed adult establishment is located in a multitenant building, the measurement described in subsection (b)(1) of this section shall be taken from the nearest point of the portion of the building where the adult establishment is located.

(3) An applicant for an adult establishment license must demonstrate to the city that the location requirements in this section have been met.

(Code 1987, § 350.1415; Ord. No. 11-2003, 12-7-2003)

Sec. 129-271. Hours of operation.

No adult establishment shall be open to the public from the hours of 10:00 p.m. to 10:00 a.m. weekdays and Saturdays, nor at any time on Sundays or national holidays.

(Code 1987, § 350.1420; Ord. No. 11-2003, 12-7-2003)

Sec. 129-272. Operation.

(a) *Off-site viewing.* Any business operating as an adult establishment shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minn. Stats. ch. 617 or other applicable federal or state statutes or local ordinances.

(b) *Entrances.* All entrances to the business, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

(c) *Layout.* The layout of any display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing including, but not limited to, books, magazines, photographs,

video tapes, or any other material, or any live dancers or entertainers.

(d) *Illumination.* Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

(e) *Signs.* Signs for adult establishments shall comply with the city's articles for signs addressed in chapter 119 and section 129-139. Signs for adult establishments shall not contain a representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

(f) *Access by minors.* No minor shall be permitted on the licensed premises. Adult goods or materials may not be offered, sold, transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

(g) *Additional conditions for adult cabarets.* The following additional conditions apply to adult cabarets:

(1) No dancer, live entertainer or performer shall be under 18 years old.

(2) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.

(3) No dancer or performer shall perform any dance or live entertainment closer than ten feet to any patron.

(4) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.

(5) No patron shall pay or give any gratuity to any dancer or performer.

(6) No dancer or performer shall solicit or receive any pay or gratuity from any patron.

(Code 1987, § 350.1425; Ord. No. 11-2003, 12-7-2003)

Secs. 129-273—129-285. Reserved.

Subdivision II. Licenses

Sec. 129-286. Procedure.

(a) *Required.* All adult establishments shall apply for and obtain a license from the city. A person or entity is in violation of this division if the person or entity operates an adult establishment without a valid license, issued by the city.

(b) *Applications.* An application for a license must be made on a form provided by the city and must include:

(1) If the applicant is an individual, the name, address, phone number, and birth date of the applicant. If the applicant is a partnership, the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation, the names, addresses, phone numbers, and birth dates of all officers and directors of the corporation;

(2) The name, address, phone number, and birth date of the operator and manager of the adult establishment, if different from the owner's;

(3) The address and legal description of the premises where the adult establishment is to be located;

(4) A statement detailing any misdemeanor, gross misdemeanor, or felony convictions relating to sex offenses, obscenity, or the operation of an adult establishment or adult business by the applicant, operator, or manager, and whether the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in another community. In the case of a corporation, a statement detailing any felony convictions by the officers and directors of the corporation, and whether or not those individuals have ever applied for or held a license to operate a similar type of business in another community;

(5) The activities and types of business to be conducted;

(6) The hours of operation;

(7) The provisions made to restrict access by minors;

(8) A building plan of the premises detailing all internal operations and activities;

(9) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(10) A statement that the applicant is qualified according to the provisions of this division and that the premises have been or will be inspected and found to be in compliance with the appropriate state, county, and local law and codes by the health official, fire marshal, and building official;

(11) The names, addresses, phone numbers, dates of birth, of the owner, lessee, if any, the operator or manager, and all employees; the name, address, and phone number of two persons, who shall be residents of the state, and who may be called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information of the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as credit which has been extended for the purposes of constructing, equipping, maintaining, operating, furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance and operation of the business;

(12) If the application is made on behalf of a joint business venture, partnership, or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses, and dates of birth of partners, owners, and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business and, in the case of a corporation, the names, addresses, and dates of birth of all officers, directors, and creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation; and

(13) Complete and accurate documentation establishing the interest of the applicant in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

(c) *Disqualifications.* The city will issue a license to an applicant within 30 days of the application unless one or more of the following conditions exist:

(1) The applicant is under 21 years of age;

(2) The applicant failed to supply all of the information requested on the license application;

(3) The applicant gives false, fraudulent, or untruthful information on the license application;

(4) The applicant has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses, or adult establishments;

(5) The adult establishment is not in full compliance with this Code and all provisions of state and federal law;

(6) The applicant has not paid the required license and investigation fees;

(7) The applicant has been denied a license by the city or any other municipal corporation in the state to operate an adult establishment, or such license has been suspended or revoked, within the preceding 12 months;

(8) The applicant is not the proprietor of the establishment for which the license is issued; or

(9) The adult establishment premises holds an intoxicating liquor, beer or wine license.

(d) *Requalification.* An applicant may qualify for an adult establishment license as follows:

(1) After one year has elapsed in the case of a previous license revocation;

(2) After two years have elapsed since the date of conviction or the date of release from confinement in the case of a misdemeanor offense;

(3) After five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or

(4) After five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any 24-month period.

(e) *Posting.* The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the adult establishment. The license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be easily read at any time.

(Code 1987, § 350.1430; Ord. No. 11-2003, 12-7-2003)

State law reference—Certain persons prohibited from owning or managing adult entertainment establishments, Minn. Stats. § 609B.545.

Sec. 129-287. Fees.

(a) The license fees for adult establishments are as follows:

(1) The annual license fee shall be as established by the city.

(2) An application for a license must be submitted to the City Clerk and accompanied by payment of the required license fee. Upon rejection of an application for a license, the city will refund the license fee.

(3) Licenses will expire on December 31 in each year. Each license will be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a prorated fee. In computing a prorated fee, any unexpired fraction of a month will be counted as one month.

(4) No part of the fee paid by any license will be refunded, except that a pro rata portion of the fee will be refunded in the following instances upon application to the City Council within 30 days from the happening of one of the following events, provided that the event occurs more than 30 days before the expiration of the license:

a. Destruction or damage of the licensed premises by fire or other catastrophe;

b. The licensee's illness, if such illness renders the licensee unable to continue operating the licensed adult establishment;

c. The licensee's death; or

d. A change in the legal status making it unlawful for the licensed business to continue.

(5) An application must contain a provision in bold print indicating that withholding information or providing false or misleading information will be grounds for denial or revocation of a license. Changes in the information provided on the application or provided during the investigation must be brought to the attention of the City Council by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the City Manager in writing. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

(b) The one-time, nonrefundable background investigative fee for an adult establishment license by the Police Department for each person identified on the application as an owner, operator, or manager of the business and for each successor, owner, operator or manager shall be established by ordinance by the City Council.

(c) The procedures for granting an adult establishment license are as follows:

(1) The city will conduct and complete an investigation within 30 days after the City Manager receives a complete application and all license and investigative fees.

(2) If the application is for a renewal, the applicant will be allowed to continue business until the City Council has determined whether the applicant meets the criteria of this division for a renewal license.

(3) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, the license must be issued by the City Council within 30 days after the investigation is completed. If the City Council fails to act within 30 days after the investigation is completed, the application will be deemed approved.

(Code 1987, § 350.1435; Ord. No. 11-2003, 12-7-2003)

Sec. 129-288. Expiration and renewal.

(a) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in section 129-286. Application for renewal must be made at least 60 days before the expiration date.

(b) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Code 1987, § 350.1445; Ord. No. 11-2003, 12-7-2003)

Sec. 129-289. Suspension.

(a) *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that the licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any provision of this division.

(2) Engaged in the sale or use of alcoholic beverages while on the adult establishment premises other than at an adult hotel or motel.

(3) Refused to allow an inspection of the adult establishment as authorized by this division.

(4) Knowingly permitted gambling by any person on the adult establishment premises.

(5) Demonstrated an inability to operate or manage an adult establishment in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(b) *Notice.* A suspension by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving

the same at the licensed business premises with the person in charge thereof, or by mailing the notice by U.S. mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

(Code 1987, § 350.1450; Ord. No. 11-2003, 12-7-2003)

Sec. 129-290. Revocation.

(a) *Suspended licenses.* The city may revoke a license if a cause of suspension in section 129-289 occurs and the license has been suspended at least once before within the preceding 12 months.

(b) *Causes of revocation.* The city may revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted to the city during the application process;

(2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the adult establishment during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in section 129-286(c)(4), for which the time period required in section 129-286(d), has not elapsed;

(6) On two or more occasions within a 12-month period, a person committed an offense occurring in or on the licensed premises of a crime listed in section 129-286(c)(4) for which a conviction has been obtained, and the person was an employee of the adult establishment at the time the offense was committed;

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(c) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) *Exceptions.* Subsection (b)(7) of this section, does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult establishment license for one year from the date the revocation became effective. If, subsequent to the revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license is revoked under subsection (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 129-286(d) have elapsed.

(f) *Notice.* A revocation by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof or by mailing the notice by U.S. mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

(Code 1987, § 350.1455; Ord. No. 11-2003, 12-7-2003)

Sec. 129-291. Procedures.

Issuance, suspension, revocation, and nonrenewal of adult establishment licenses are governed by the following provisions:

(1) In the event that the City Council proposes not to renew, to revoke, or to suspend the

license, the licensee must be notified in writing of the basis for such proposed revocation or suspension. The Council will hold a hearing for the purpose of determining whether to revoke or suspend the license. The hearing must be within 30 days of the date of the notice. The City Council must determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner. The Council must notify the licensee of its decision within that period.

(2) If the Council determines to suspend or revoke a license, the suspension or revocation is not effective until 15 days after notification of the decision to the licensee. If, within that 15 days, the licensee files and serves an action in state or federal court challenging the Council's action, the suspension or revocation is stayed until the conclusion of such action.

(3) If the City Council determines not to renew a license, the licensee may continue its business for 15 days after receiving notice of such nonrenewal. If the licensee files and serves an action in state or federal court within that 15-day period for the purpose of determining whether the city acted properly, the licensee may continue in business until the conclusion of the action.

(4) If the City Council does not grant a license to an applicant, then the applicant may commence an action in state or federal court within 15 days for the purpose of determining whether the city acted properly. The applicant may not commence doing business unless the action is concluded in its favor.

(Code 1987, § 350.1460; Ord. No. 11-2003, 12-7-2003)

Sec. 129-292. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the application.

(Code 1987, § 350.1465; Ord. No. 11-2003, 12-7-2003)

Secs. 129-293—129-312. Reserved.

ARTICLE VI. PERFORMANCE STANDARDS

Sec. 129-313. Purpose.

(a) The performance standards established in this article are designed to encourage a high standard of development by enhancing the compatibility of neighboring land uses. The performance standards are designed to prevent and eliminate those conditions that cause blight and to enhance and protect the health, safety, welfare and appearance of the community consistent with established policies and standards. All future development in any district shall be required to meet these standards.

(b) The standards shall also apply to existing development where so stated. The City Manager shall be responsible for enforcing the standards.

(c) Before any building permit is approved, the planning staff shall determine whether the proposed use will conform to the performance standards. The applicant shall supply all data necessary to demonstrate such conformance.

(Code 1987, § 350.700; Ord. No. 61-1993, § 350.705, 2-23-1994)

Sec. 129-314. Exterior storage.

In all residential districts, it is the responsibility of the owner of any property, improved or unimproved, to maintain the outdoor areas; including courtyards and the like, of the property and adjacent rights-of-way in a manner that prevents blight and complies with the following requirements:

(a) *Storage on private property*. Exterior storage of ice shelters, recreational vehicles, motorized vehicles, utility trailers, watercraft, or watercraft trailers is permitted on all residentially zoned properties and shall be regulated as follows:

(b) *Developed lots*. Exterior storage on lots with principal dwellings shall be limited to no more than one (1) ice shelter, recreational vehicle, motorized vehicle, utility trailer, watercraft, watercraft trailer, objects screened by a tarp or other screening device, or any combination thereof, for every 1,500 square feet of lot area, up to a maximum of six (6).

(c) *Undeveloped lots*. Exterior storage on lots with no principal dwelling shall be limited to no more than one (1) ice shelter, recreational vehicle, motorized vehicle, utility trailer, watercraft, watercraft trailer, objects screened by a tarp or other screening device, or any combination thereof, for every 3,000 square feet of lot area, up to a maximum of six (6).

(d) *Storage for hire prohibited*. All exterior storage items must be owned by, leased to, or rented to the owner or occupant of the property on which it is stored. The storage of un-owned items under storage for hire, trade, or other in-kind consideration is prohibited on all residential properties.

(e) Storage of recreational vehicles and utility trailers. Storage of recreational vehicles and utility trailers shall be regulated as follows:

(1) It is unlawful for any person to use for human habitation a recreational vehicle or utility trailer that is parked or stored upon public property.

(2) It is unlawful for any person to park or store a recreational vehicle or utility trailer for human habitation upon any private property for more than 72 hours, without first obtaining a permit from the City, which may not exceed 14 days in aggregate.

(3) All outdoor storage of recreational vehicles and utility trailers stored in whole on areas meeting the requirements of section 121-146 (13), are permitted to be stored no closer than one (1) foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13).

(4) All exterior storage on an area which does not comply with subd. 3 shall be stored no less than five (5) feet from any lot line.

(f) Storage of motorized vehicles. Storage and parking of all motorized vehicles other than recreational vehicles shall be regulated as follows:

(1) Operability and restorations. All outdoor storage of motorized vehicles on any residentially zoned property within the City shall be operable. The parking or exterior storage of junk vehicles is prohibited.

(2) Exterior storage of motorized vehicles other than recreational vehicles, with a maximum gross vehicle weight (GVW) of 10,000 pounds or less is allowed in all residential districts.

(3) Exterior storage of motorized vehicles in excess of 10,000 pounds GVW is prohibited in all residential districts.

(4) All exterior storage of motorized vehicles stored in whole on areas of impervious cover are permitted to be stored no closer than one (1) foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13). Storage on an area which does not meet the requirements of section 121-146 (13) shall be considered storage on non-impervious cover.

(5) All exterior storage of motorized vehicles on areas of non-impervious cover shall be stored no less than five (5) feet from any lot line.

(g) Storage of watercraft and watercraft trailers. Watercraft, unoccupied watercraft trailers, and watercraft on watercraft trailers shall be subject to the following storage requirements:

(1) *Operability and restorations.* All watercraft stored in the open on any residentially zoned property within the City shall be in operable condition. The storage of junk watercraft or junk watercraft trailers is prohibited.

(2) *Allowed outdoor storage locations.* The exterior storage of watercraft and unoccupied watercraft trailers on residential properties is permitted as follows:

i. *Lakeshore lots.* Watercraft and unoccupied watercraft trailers may be stored in a side yard, rear yard, front yard, and lakeshore yard, so long as the storage meets required setbacks and have no significant impact on lake views to adjacent lakeshore properties.

ii. *Non-lakeshore lots.* Watercraft and unoccupied watercraft trailers may be stored in front yard, side yard, or rear yard areas, so long as the storage meets required setbacks.

(3) *Required setbacks.* All exterior storage of watercraft and watercraft trailers shall be subject to the following setbacks:

i. *Storage on impervious cover.* All exterior storage of watercraft and watercraft trailers stored in whole on areas of impervious cover are permitted to be stored no closer than one (1) foot to any side, front, or rear lot line, so long as the construction of the area meets the requirements of section 121-146 (13). Storage on an area which does not meet the requirements of section 121-146 (13) shall be considered storage on non-impervious cover.

ii. *Storage on non*-impervious cover. All exterior storage of watercraft and watercraft trailers on areas of non-impervious cover shall be stored no less than five (5) feet from any lot line.

(h) *Storage of special mobile equipment.* The exterior storage of special mobile equipment on any residentially zoned property shall be prohibited; exclusive of equipment stored on a property for use in conjunction with a valid building permit issued by the City.

(i) *Prohibited exterior storage.* The exterior storage of any of the following is prohibited:

(1) *Trash and debris.*

i. All garbage, rubbish, animal carcasses, animal and human waste, and other waste materials stored outside of an approved rubbish pre-collection container;

ii. Accumulations of litter, glass, scrap materials (such as wood, cardboard, metal, paper, or plastics), junk, combustible materials, stagnant water, plastic bags, trash, or other debris outside of an approved rubbish pre-collection container;

iii. Rubble, trash, debris, spoil, and other construction wastes generated during permitted construction not removed from the property within 21-days of being generated.

iv. Accumulations of discarded, disused, or junk clothing, furniture, carpet, or any other items not designed for outdoor storage.

(2) *Non-trash items.*

i. Accumulations of discarded, disused, or junk wood or plastic pallets;

ii. Accumulations of automotive parts or tires;

iii. All construction and building materials, unless such materials are being used at the time in the construction of a building, in which case, such construction must be permitted and on a continuous, uninterrupted basis;

iv. All discarded, disused, or junk appliances or appliance parts;

v. All indoor or upholstered furniture of a type or materials which is deteriorated by exposure to outdoor elements; or

vi. All recycling materials, except for reasonable accumulations, amounts consistent with a policy of regular removal, which are stored in a well-maintained manner according to Chapter 54.

(3) All other non-trash items.

i. Storage of items which are a type or quantity inconsistent with normal and usual use;

ii. Are of a type or quantity inconsistent with the intended use of the property; or

iii. Are likely to obstruct or impede the necessary passage of fire or other emergency personnel.

(j) Exterior storage of firewood. Exterior storage of firewood may be stored upon all residential properties solely for use on the premises and not offered for resale. All firewood located upon residential properties shall be stored as follows:

(1) All firewood shall be cut or split, prepared for use, and stored in a regular, orderly arrangement that is stable and reasonably resistant to collapse.

(2) The height of a woodpile over three (3) feet shall be no more than twice its width, with a maximum height of six (6) feet.

(3) Firewood shall be stored not less than three and one-half (3.5) inches off the ground and on a well supported, non-rotting base.

(4) Storage of firewood shall be permitted in side and rear yard areas only and must maintain a minimum setback of four (4) feet from any side or rear lot line, unless separated by a fence, then no closer than one (1) foot.

(k) Violation subject to abatement. A violation of this Code shall be deemed a public nuisance, subject to the notification and abatement procedures contained within Chapter 42.

(Ord. No. 01-2017, 2-5-2017)

Sec. 129-315. Refuse.

(a) In all districts, all waste material, with the exception of debris, refuse, or garbage shall be kept in an enclosed building or properly contained in a closed container designed for such purposes. The owner of vacant land shall be responsible for keeping such land free of refuse. Existing uses shall comply with this provision within six months following the enactment of the ordinance from which this chapter is derived.

(b) Passenger vehicles and trucks in an inoperative state shall not be parked in residential districts for a period exceeding 96 hours. The term "inoperative" means incapable of movement under their own power and in need of repairs or removal to junk yard. All exterior storage not included as a permitted accessory use, a permitted use, or included as part of a conditional use permit, or otherwise permitted by provisions of this chapter shall be considered as refuse.

(Code 1987, § 350.715; Ord. No. 61-1993, § 350.715, 2-23-1994)

Sec. 129-316. Screening and buffering.

(a) Screening shall be required in all residential zones where:

(1) Any off-street parking area contains more than four parking spaces and is within 30 feet of an adjoining residential zone; and

(2) Where the driveway to a parking area of more than six parking spaces is within 15 feet of an adjoining residential use or zone.

(b) Where any business (structure, parking or storage) is adjacent to property zoned or developed for any residential use, that business or industry shall provide screening along its boundary with the residential property. Screening shall also be provided where a business, parking lot, or industry is across the street from a residential zone, but not on that side of a business or industry considered to be the front (as determined by this chapter).

(c) All exterior storage in commercial districts shall be screened. The exceptions are:

(1) Merchandise being displayed for sale;

(2) Materials and equipment presently being used for construction on the premises; and

(3) Merchandise located on service station pump islands. All exterior storage in commercial districts shall not impede traffic control and must follow section 129-322.

(d) Required screening or buffering may be achieved with fences, walls, earth berms, hedges or other landscape materials. All walls and fences shall be architecturally harmonious with the principal building. Earth berms shall not exceed a 3:1 slope ratio.

(e) The screen shall be designed to employ materials which provide an effective visual barrier during all seasons.

(f) All required screening or buffering shall be located on the lot occupied by the use, building, facility or structure to be screened. No screening or buffering shall be located on any public right-of-way or within ten feet of the traveled portion of any street or highway.

(g) Screening or buffering required by this section shall be of a height needed to accomplish the goals of this section without impairing safe sight distances at intersections, driveways and other critical locations.

(Code 1987, § 350.720; Ord. No. 61-1993, § 350.720, 2-23-1994)

Sec. 129-317. Landscaping and tree preservation.

(a) *Minimum requirements.* All open areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, ornamental trees, shrubs, flowers, ground cover, decorative walks or other similar site design materials in a quantity and placement suitable for the site. A reasonable attempt shall be made to preserve as many existing trees as is practicable and to incorporate them into the development.

(b) *Minimum number of trees.* The minimum number of overstory trees on any given site shall be as indicated in this section. These are minimum requirements that are typically supplemented by other understory trees, shrubs, flowers and ground covers deemed appropriate for a complete quality landscape treatment of a site.

(1) Commercial, industrial, and institutional sites shall contain at a minimum, the greater of:

a. One tree per 1,000 square feet of gross building floor area; or

b. One tree per 50 linear feet of site perimeter.

(2) Multiple-family residential sites shall contain at a minimum: one tree per dwelling unit.

(c) *Minimum size of plantings.* Required trees shall be of the following minimum planting size:

(1) Deciduous trees with a 2.5-inch caliper diameter.

(2) Coniferous trees of six feet in height.

(3) Deciduous shrubs of two feet in height.

(4) Evergreen shrubs of two feet in height or two feet in width whichever applies.

(d) *Species.*

(1) All trees used in site developments shall be indigenous to the appropriate hardiness zone and physical characteristics of the site.

(2) All deciduous trees proposed to satisfy the requirements herein shall be long-lived hardwood species.

(3) The compliment of trees fulfilling the landscaping requirements shall be not less than 25 percent deciduous and not less than 25 percent coniferous.

(e) *Sodding and ground cover.* All areas not otherwise improved in accordance with approved site plans shall be sodded or seeded.

(f) *Maintenance.* In all districts, required landscaping shall be maintained so as not to be unsightly or present harmful health or safety conditions. Dead plant materials shall be replaced promptly.

(g) *Tree preservation policy.*

(1) It is the intent of the city to preserve wooded areas throughout the city and with respect to future site development, to retain, as far as practicable, substantial existing tree cover.

(2) Credit for the retention of existing trees which are of acceptable species, size and location may be given to satisfy the minimum number requirements set forth in this section.

(3) The following restrictions shall apply to all development occurring in wooded areas:

a. Structures shall be located in such a manner that the maximum number of trees shall be preserved.

b. Prior to the granting of a building permit, it shall be the duty of the person seeking the permit to demonstrate that there are no feasible or prudent alternatives to the cutting of trees on the site.

c. Forestation, reforestation or landscaping shall utilize a variety of tree species and shall not utilize any species presently under disease epidemic. Species planted shall be hardy under local conditions and compatible with the local landscape.

d. Development including grading and contouring shall take place in such a manner that the root zone aeration stability of existing trees shall not be affected and shall provide existing trees with a watering equal to one-half the crown area.

e. Notwithstanding the restrictions in this subsection, the removal of trees seriously damaged by storms, or other natural causes, shall not be prohibited.

(Code 1987, § 350.725; Ord. No. 61-1993, § 350.725, 2-23-1994)

Sec. 129-318. Glare.

In all districts, any lighting used to illuminate an off-street parking area, sign, or other structure, shall be arranged so as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky-reflected glare, where from floodlights or from high temperature processes such as combustion or welding, shall not be directed into any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights which cast light on a public street shall not exceed one footcandle (meter reading) as measured from the centerline of said street. Any light or combination of lights which cast light on residential property shall not exceed 0.4 footcandle (meter reading) as measured from said property line.

(Code 1987, § 350.730; Ord. No. 61-1993, § 350.730, 2-23-1994)

Sec. 129-319. Bulk storage.

All uses associated with the bulk storage of oil, gasoline, liquid fertilizer, chemicals, and similar liquids shall require a conditional use permit in order that the governing body may have assurance that fire, explosion, or water or soil contamination hazards are not present (that would be detrimental to the public health, safety, and

general welfare). All existing, aboveground liquid storage tanks having a capacity in excess of 10,000 gallons shall secure a conditional use permit within 24 months following enactment of the ordinance from which this chapter is derived. The City Council may require the development of diking around said tanks. Diking shall be suitably sealed, and shall hold a leakage capacity equal to 115 percent of the capacity of the largest, single tank.

(Code 1987, § 350.735; Ord. No. 61-1993, § 350.735, 2-23-1994)

Sec. 129-320. Nuisances.

(a) *Nuisance characteristics.* No noise, odors, vibration, smoke, air pollution, liquid, or solid wastes, heat, glare, dust, or other such adverse influences shall be permitted in any district that will in any way have an objectionable effect upon adjacent or nearby property. All wastes in all districts shall be disposed of in a manner that is not dangerous to public health and safety nor will damage public waste transmission or disposal facilities.

(b) *Nonindustrial district standards.* The following standards apply to nonindustrial districts:

(1) *Odors and noise.* Odors shall not be allowed to exceed the standards stated in the Minnesota Air Pollution Control Regulations. Ambient noise shall not be allowed to exceed MPCA standards.

(2) *Miscellaneous nuisances.*

a. It shall be unlawful to create or maintain a junkyard or vehicle dismantling yard except as provided herein.

b. The following are declared to be nuisances affecting public health or safety:

1. The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.

2. The ownership, possession or control of any unused refrigerator or other container, with doors which fasten automatically when closed, of sufficient size to retain any person, to be exposed and accessible to the public without removing the doors, lids, hinges or latches or providing locks to prevent access by the public.

(3) *Dwelling units prohibited.* No garage, tent, trailer, (except licensed mobile home) or accessory building and/or basement in and of itself shall be at any time used as a permanent residence. Earth sheltered housing is permitted.

(Code 1987, § 350.7470; Ord. No. 61-1993, § 350.740, 2-23-1994)

Sec. 129-321. Soil erosion and sedimentation control.

The following are general standards for soil erosion and sedimentation control:

(1) All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.

(2) Development on slopes with a grade over twelve percent shall be carefully reviewed to insure adequate measures have been taken to prevent erosion, sedimentation, and structural damage.

(3) Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.

(4) Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time.

(5) The drainage system shall be constructed and operational as quickly as possible during construction.

(6) Whenever possible, natural vegetation shall be retained and protected.

(7) Where the topsoil is removed, sufficient arable soil shall be set aside for re-spreading over the developed area. The soil shall be restored to a depth of four inches and shall be of a quality at least equal to the soil quality prior to development.

(8) When soil is exposed, the exposure shall be for the shortest feasible period of time. No exposure shall be planned to exceed 60 days. Said time period may be extended only if the Planning Commission is satisfied that adequate measures have been established and will remain in place.

(9) The natural drainage system shall be used as far as is feasible for storage and flow of runoff. Stormwater drainage shall be discharged to marshlands, swamps, retention basins or other treatment facilities. Diversion of stormwater to marshlands or swamps shall be considered for existing or planned surface drainage. Marshlands and swamps used for stormwater shall provide for natural or artificial water level control. Temporary storage areas or retention basins scattered throughout development areas shall be encouraged to reduce peak flow, erosion damage, and construction costs.

(Code 1987, § 350.7745; Ord. No. 61-1993, § 350.745, 2-23-1994)

Sec. 129-322. Traffic control.

(a) The traffic generated by any use shall be channelized and controlled in a manner that will avoid:

(1) Congestion on the public streets;

(2) Traffic hazards; and

(3) Excessive traffic through residential areas, particularly truck traffic.

(b) Internal traffic shall be so regulated as to ensure its safe and orderly flow.

(c) Traffic into and out of business areas shall in all cases be forward moving with no backing into streets.

(d) On corner lots, nothing shall be placed or allowed to grow with the exception of seasonal crops in such a manner as materially to impede vision between a height of 2½ and ten feet above the centerline grades of the intersecting streets to a distance such that a clear line of vision is possible of the intersection street from a distance of 30 feet from the intersection of the right-of-way lines.

(Code 1987, § 350.750; Ord. No. 61-1993, § 350.750, 2-23-1994)

Sec. 129-323. Parking.

(a) *Location.* All accessory off-street parking facilities required herein shall be located as follows:

(1) Spaces accessory to one-family and two-family dwellings shall be on the same lot as the principal use served.

(2) Spaces accessory to multiple-family dwellings shall be on the same lot as the principal use served or within 200 feet of the main entrance to the principal building served.

(3) Spaces accessory to uses located in a business district shall be within 800 feet of a main entrance to the principal building served.

(4) No off-street open parking area containing more than four parking spaces shall be located closer than five feet from an adjacent lot zoned or used for residential purposes.

(b) *General provisions.*

(1) *Parking spaces.* Each parking space shall not be less than nine feet wide and 18 feet in length exclusive of an adequately designed system of access drives. Handicapped parking shall be provided and constructed pursuant to state law with stalls of not less than 12 feet wide and 20 feet in length.

(2) *Calculation.* When the computation of required parking spaces produces a fractional result, fractions of one-half or greater shall require one full parking space.

(3) *Gross floor area.* The term gross floor area for the purpose of calculating the number of off-street parking spaces required shall be determined on the basis of the exterior floor dimensions of the building, structure, or use, multiplied by the number of floors, minus the greater of 10% or the square footage devoted to restrooms, mechanical spaces, entry vestibules, and exit hallways or stairwells as documented on a submitted floor plan.

(4) *Control of off-street parking facilities.* When required, accessory off-street parking facilities are provided elsewhere than on the lot in which the principal use served is located, they shall be in the same ownership or control, either by deed or longterm lease, as the property occupied by such principal use, and the owner of the principal use shall file a recordable document with the City Council requiring the owner and his heirs and assigns to maintain the required number of off-street spaces during the existence of said principal use.

(5) *Use of parking area.* Required off-street parking space in any district shall not be utilized for open storage of goods or for the storage of vehicles which are inoperable or for sale or for rent.

(c) *Design and maintenance of off-street parking areas.*

(1) *Access.* Parking areas shall be designed so as to provide adequate means of access to a public alley or street. Such driveway access shall not exceed 24 feet in width and shall be so located as to cause the least interference with traffic movement.

(2) *Signs.* No signs shall be located in any parking area except as necessary for orderly operation of traffic movement and such signs shall not be a part of the permitted advertising space.

(3) *Multiple-family, commercial and industrial uses.* For multiple-family, commercial and industrial uses, parking areas and access drives shall be paved with concrete or bituminous surfacing with proper drainage, and concrete curb.

(4) *Spaces for six or more cars.* When a required off-street parking space for six cars or more is located adjacent to a residential district, a fence of adequate design, not over five feet in height nor less than four feet in height shall be erected along the residential district property line.

(5) *Maintenance responsibility.* It shall be the joint and several responsibility of the operator and owner of the principal uses and/or building to maintain, in a neat and adequate manner, the parking space, accessways, landscaping and required fences.

(6) *Design and maintenance.* Parking areas shall be so designed that internal circulation shall be available without utilizing the public street.

(d) *Truck parking in residential areas.* No motor vehicle over one ton capacity bearing a commercial license and no commercially licensed trailer shall be parked or stored in a platted residential district or a public street except when loading, unloading, or rendering a service. Recreation vehicles and pickups are not restricted by the terms of this provision.

(e) *Parking Credit for B-1 Central Business District and B-2 General Business District.* The number of off-street parking spaces provided for a building in the B-1 or B-2 Business Districts constructed prior to January 1, 2014 shall satisfy the requirement of this section for any use that is determined to be a retail store; business or professional office; or similar use, as determined by Staff. When such structure is reconstructed, enlarged, structurally altered, changed in occupancy to a more intensive use category or otherwise increased in capacity, off-street parking shall be provided for that portion of the structure or use constituting the increase in capacity. Notwithstanding the provisions above, any parking areas now serving such existing buildings shall not be reduced below the requirements established in this section in the future.

(f) *Spaces required.* Off-street parking spaces required. One space equals 325 square feet

Uses	*Spaces Required*
One-family and two-family residences	Two spaces per dwelling unit
Multiple dwellings	2½ spaces per dwelling unit, one which must be undercover.
Churches, theaters, auditoriums and other places	One space for each three seats or for each five feet of assembly pew length based upon maximum design capacity.
Business and professional offices	One space for each 400 square feet of gross floor space.
Medical and dental clinics	Five spaces per professional, plus one space for each employee.
Hotel or motel	One space per rental unit plus one space per employee.
School, elementary and junior	At least one parking space for high each classroom plus one additional space for each ten student capacity.
School, high school through college	At least one parking space for each four students based on design capacity, plus one additional space for each classroom.
Drive-in food establishment	At least one parking space for 15 square feet of gross floor space in a building allocated to a drive-in operation.
Bowling alley	At least five parking spaces for each alley, plus additional spaces as may be required herein for related uses such as a restaurant, plus one additional space for each employee.
Automobile service station	At least two off-street parking spaces plus four off-street parking spaces for each service station stall.
Retail store	At least one off-street parking space for each 250 square feet of gross floor area.
Restaurants, cafes, bars, taverns, nightclubs	At least one space for each three seats based on capacity design.
Funeral homes	One parking space for each five seats or 35 square feet of seating area where there are no fixed seats, plus one parking space for each 250 square feet of floor area not used for seating.
Industrial, warehouse, storage, handling of bulk goods.	At least one space for each employee on maximum shift or one space for each 2,000 square feet of gross floor area, whichever is larger.
Day Care Centers	At least one off-street parking space for each employee plus one space for each four children or clients.
Fitness/Health Studio	At least one space for every 250 square feet of gross floor area.
Shopping Centers	At least 4.5 spaces for every 1,000 square feet of gross floor area.
Brewery/Microdistillery	At least one space for each employee on maximum shift or one space for each 2,000 square feet of gross floor area, whichever is greater.
Brewpub	Parking space requirements shall be based up on the types of uses on the premises. The retail portion of the business would fit under the Retail Store requirement. The restaurant or taproom portion under Restaurants, cafes, bars taverns and

Uses	*Spaces Required*
	night club requirement. The production portion under the Industrial, warehouse, storage and handling of bulk goods requirement.
Taproom/Cocktail Room	At least one space for each three seats based on capacity design.
Uses not specifically noted shall be determined by the Community Development Director on the same basis as required for the most similar listed uses in Section 129-323 (f) or an off-street parking generation rate study. Appeals will be addressed as identified in Sec. 129-32. Any determinations made by the Community Development Director that were not previously identified through Council action shall be forwarded to the Planning Commission and City Council as information.	

(Code 1987, § 350.760; Ord. No. 61-1993, § 350.760, 2-23-1994; Ord. No. 13-2006, 7-9-2006; Ord. No. 01-2014, 1-26-14; Ord. No 05-2016 5-8-2016; Ord. No. 10-2016, 9-4-2016)

Sec. 129-324. Off-street loading and unloading areas.

(a) *Location.* All required loading berths shall be off-street and shall be located on the same lot as the building or use to be served. A loading berth shall be located at least 25 feet from the intersection of two street rights-of-way and at least 50 feet from a residential district, unless within a building. Loading berths shall not occupy the required front yard space.

(b) *Size.* Unless otherwise specified in this chapter, a required loading berth shall not be less than 12 feet in width, 50 feet in length, and 14 feet in height, exclusive of aisles and maneuvering space.

(c) *Access.* Each required loading berth will be located with appropriate means of vehicular access to a street or public alley in a manner which will least interfere with traffic.

(d) *Surfacing.* All loading berths and accessways shall be improved with a hard surface to control the dust and drainage before occupancy of the structure.

(e) *Accessory use.* Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this chapter shall not be used for the storage of goods, inoperable vehicles, or be included as a part of the space requirements necessary to meet the off-street parking area.

(f) *New or altered structures.* Any structure erected or substantially altered for a use which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, shall provide off-street loading space as required for a new structure.

(g) *Screening.* Screening shall be required of all loading and unloading areas located adjacent to residential and agricultural districts.

(Code 1987, § 350.765; Ord. No. 61-1993, § 350.765, 2-23-1994)

Sec. 129-325. Auto service stations.

(a) *Lot size.* A service station site shall be a minimum of 20,000 square feet.

(b) *Setbacks.* Buildings shall be set back at least 35 feet from the street right-of-way. Adjacent to residential districts, service station buildings, signs, and pumps shall be a minimum of 25 feet from adjoining property. In commercial areas, the structures shall be set back at least ten feet from adjoining property.

(c) *Curbs and gutters.* Curbs and gutters shall be installed on all streets giving access to the station. There shall be a six-inch curb along all interior driveways.

(d) *Fencing and screening.* When adjacent or near to residential property, there shall be a screening fence. When adjacent to commercial property, there shall be a bumper-type fence about 18 inches high between the station and the adjacent commercial property.

(e) *Architecture.* The station should be of a type that is reasonably compatible with the surroundings. Host national oil companies have a variety of building types which could be viewed for selection of the most suitable.

(f) *Outdoor displays.* The storage of used tires, batteries, and other such items for sale outside the building should be controlled; such items should be displayed in specifically designed containers and be limited to one or two areas well back from the street right-of-way line. Junk cars, empty cans, and other unsightly materials should not be permitted in areas subject to public view.

(g) *Business activities not included.* Business activities not listed in the definition of service stations in this chapter are not permitted on the premises of a service station unless a conditional use permit is obtained specifically for such business. Such activities include, but are not limited to, the following:

(1) Automatic carwash and truck wash;

(2) Rental of vehicles, equipment, or trailers; and

(3) General retail sales.

(Code 1987, § 350.770; Ord. No. 61-1993, § 350.770, 2-23-1994)

Sec. 129-326. Drive-in business development standards.

The following standards shall apply to drive-in businesses in all districts:

(1) The entire area of any drive-in business shall have a drainage system approved by the city engineer.

(2) The entire area other than that occupied by structures or plantings shall be surfaced with a hard surface material which will control dust and drainage.

(3) A fence or screen of acceptable design not over six feet in height or less than four feet shall be constructed along the property line abutting a residential district and such fence or screen shall be adequately maintained. The fence shall not be required in front of the setback line.

(4) General standards for drive-in businesses.

a. Any drive-in business serving food or beverages may also provide, in addition to vehicular service areas, indoor food and beverage service seating area.

b. The hours of operation shall be set forth as a condition of any conditional use permit for drive-in business.

c. Each drive-in business serving food may have outside seating.

d. Each food or beverage drive-in business shall place refuse receptacles at all exits as well as one refuse receptacle per ten vehicle parking spaces within the parking area.

(5) Location standards for drive-in businesses.

a. No drive-in business shall be located within 400 feet of a public or parochial school, church, public recreation area, or any residential district.

b. No drive-in business shall be located such that it may increase traffic volumes on nearby residential streets.

c. No drive-in shall be located on any street other than one designated as a thoroughfare or business service road in the comprehensive plan.

d. The design of any structure shall be compatible with other structures in the surrounding area.

e. Electronic devices such as loudspeakers, automobile service order devices, drive-in theater car speakers and similar instruments shall not be located within 400 feet of any residentially zoned or used property, nor within 200 feet of any adjacent lot regardless of use of zoning district.

f. No service shall be rendered, deliveries made, or sales conducted within the required front yard; customers served in vehicles shall be parked to the sides

and/or rear of the principal structure.

g. No permanent or temporary signs visible from the public street shall be erected without specific approval in the permit.

h. No plan shall be approved which will in any way constitute a hazard to vehicular or pedestrian circulation. No access drive shall be within 50 feet of intersecting street curblines.

(6) In the case of a drive-in theater, a solid fence not less than eight feet in height and extending at least to within two feet of the ground shall be constructed around the property.

(7) The lighting shall be designed so as to have no direct source of light visible from the public right-of-way or adjacent land in residential use.

(Code 1987, § 350.775; Ord. No. 61-1993, § 350.775, 2-23-1994)

Sec. 129-327. Carwashes.

(a) *Lot area and setback requirements.* The following are lot area and setback requirements for carwashes:

(1) A coin-operated self-service carwash shall have a minimum lot area of 10,000 square feet with a minimum of 100 feet of frontage along the major road.

(2) A drive-through automatic carwash shall have a minimum lot area of 15,000 square feet with a minimum of 120 feet of frontage along the major road.

(3) A conveyor automatic type carwash shall have a minimum lot area of 20,000 square feet with a minimum of 150 feet of frontage along the major road.

(4) Front yard setback. All carwashes shall have a minimum 35-foot front yard setback measuring from the right-of-way line to the front wall of the building. All other setback requirements provided in this chapter for the zoning district where a particular carwash is located shall apply.

(b) *Protective wall.* All carwashes shall have a six-foot high, eight-inch thick brick wall or a decorative poured concrete wall at least four inches thick when adjacent to an existing residence or residential district or adjacent to an alley which abuts an existing residence or residential district. All protective walls shall conform to the principal structure's setback requirements.

(c) *Parking.*

(1) A coin-operated self-service carwash shall have a minimum of three stack spaces per bay not including the wash bay spaces; one dry-off space per bay in addition to the wash bay space, and one parking space per employee.

a. A stack space is defined as an area where the car can wait before entering the carwash which shall consist of at least 200 square feet, with a length of 20 feet and a width of ten feet.

b. A dry-off space is defined as an area where the car can be parked after leaving the carwash area so that the car can be dried off which shall consist of at least 200 square feet, with a length of 20 feet, and a width of ten feet.

(2) The automatic drive-through carwash shall have a minimum of five stack spaces per bay and two parking spaces for dry-off and one parking space for every employee during one shift, when the maximum employees are employed.

(3) The automatic conveyor type carwash shall have a minimum of ten stack spaces per bay and three parking spaces for dry-off and one parking space for every employee employed during one shift, when the maximum employees are employed.

(d) *Lights.* All carwashes shall have lighting systems with a minimum of one footcandle intensity to

illuminate the entire premises without disturbing the surrounding area.

(e) *Drainage and wastewater disposal.* Catchbasins shall be provided at the curb cuts of all exits for drainage from cars leaving the carwash. Wastewater from car washing shall be emitted into the sanitary sewer after flowing through grease and mud trap. A sewer flow rate will be set in relation to the size of the facility. Failure to maintain acceptably clean grease and mud traps will be cause for revocation of the license.

(f) *Building operations.* All operations shall be conducted within the buildings except for vacuuming and the dispensing of gasoline.

(g) *Prohibited practices and regulations.*

(1) The licensee shall keep the premises of any carwash free at all times from debris and waste materials. Said licensee shall cause all such debris and waste materials to be removed during each 24-hour period and as often as may be necessary to prevent any such debris or waste materials from being blown to nearby streets and premises.

(2) No persons shall place or leave any debris or waste materials upon the premises of any carwash unless such debris or waste materials be placed in a waste receptacle provided on the premises for such purposes.

(3) No persons upon or near the premises of any carwash shall race the engine of any motor vehicle, cause any horn to be blown except as a traffic warning, or cause any disturbance or loud noise upon or nearby said premises.

(4) No person shall loiter and the licensee shall not permit persons to loiter upon the premises if such persons are not actually engaged in washing cars.

(5) The licensee shall maintain quiet and order upon the premises. The licensee shall see that entrances and exits and abutting alleys are kept free from congestion and that this chapter is observed.

(6) It shall be unlawful to keep any establishment open for business between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(7) The premises on a carwash shall be kept adequately lighted at all times when open to the public. Lights shall be kept adequately shaded or otherwise regulated so as to prevent them from shining upon adjacent premises.

(Code 1987, § 350.785; Ord. No. 61-1993, § 350.785, 2-23-1994)

Sec. 129-328. Acceptable building materials.

(a) *Submittal requirements.* The application for a building permit in addition to other information required shall include exterior elevations of the proposed structure. The information shall be of sufficient detail to adequately and accurately indicate the height, size, design and the appearance of all elevations of the proposed building and description of the construction materials to be used therein.

(b) *Residential construction.*

(1) For residential structures, required building permit information shall indicate that the exterior architectural design, when erected, will not be similar to the architectural design of any structure or structures already constructed, or in the course of construction, within two lots on each side directly across from or diagonally across from the same unit. The exterior architectural design of a structure shall not be so at variance with the character of the applicable zoning district established by this chapter as to cause a substantial depreciation in the property values of said neighborhood within said district or elsewhere or adversely affect the public health, safety or general welfare. No building permit will be issued to houses inconsistent with this requirement.

(2) The following criteria shall be utilized in the review of plans to determine similar architectural design. A building permit will be issued providing that the applicant can demonstrate to the building official that no more than two of the following five

conditions are applicable:

a. The roof style of the proposed structure is similar to the structure it resembles;

b. The roof pitch of the proposed structure is less than three vertical units in 12 from the structure it resembles;

c. More than half of the exterior surface materials of the proposed structure are the same as the structure it resembles;

d. The relative location of an attached garage, porch, portico, breezeway, gable or other major design feature attached to the proposed structure is similar to the structure it resembles; or

e. The relative location of entry doors, windows, shutters or chimneys in the proposed construction is similar to the structure it resembles.

(c) *Commercial building materials.* No building permit shall be issued for any commercial or industrial structure that contains unadorned, prestressed concrete panels, concrete block or sheet metal, either corrugated or plain. Acceptable building materials include wood, stone, brick, block or concrete that incorporates significant textured surfacing, exposed aggregate or other patterning. The use of metal on building exteriors is to be limited to the trim detailing and/or the use of metal and glass in curtain walls. Architectural metal roof systems and canopies are permitted.

(d) *Pole buildings.* A pole building which shall be understood to mean any building using wood or metal poles as a principal structural support to achieve alignment and bearing capacity shall be prohibited.

(e) *Additional submittals.* When required by the building official, applicants for building permits shall be required to submit exterior elevations of the proposed structure and photographs of the front exterior of neighboring structures within the limits defined in subsection (b) of this section. A list of exterior finish materials and colors may also be required.

(f) *Appeals process.* Any person aggrieved by a decision of the building official regarding the use of certain materials or regarding questions of architectural design shall be entitled to appeal the building official's decision to the City Council. The City Council shall act on the matter after receiving recommendations from the Planning Commission.

(Code 1987, § 350.790; Ord. No. 61-1993, § 350.790, 2-23-1994)

Sec. 129-329. Breweries, Brewpubs, Taprooms, Microdistilleries, or Cocktail Rooms.

(a) *Licensing.* The owner of the brewery, brewpub, microdistillery, taproom, or cocktail room shall obtain all federal, state, and city licenses necessary for the operations.

(b) *Deliveries.* Adequate space for off-street loading and unloading of all trucks greater than twenty-two (22) feet in length shall be provided. If off-street loading is not possible, the City may impose limits on the number and hours for deliveries that must occur along public rights of way.

(c) *Outdoor Storage.* No outdoor storage is permitted on the site, with the exception that refuse and/or recycling may occur in an enclosure that is fully screened from adjoining streets and residentially zoned properties.

(d) *Noise.* Noise shall not be allowed to exceed MPCA standards

(e) *Odors.* The micro-production facility shall take appropriate measures to reduce or mitigate any odors generated from the operation and be in compliance with any applicable Minnesota Pollution Control Standards. Waste products shall be disposed of in a timely manner and in such a way as to reduce odors.

(Ord. No. 10-2016, 9-4-2016)

Secs. 330—129-350. Reserved.

ARTICLE VII. WETLAND PROTECTION*

***State law reference—**Wetland preservation areas, Minn. Stats. § 103F.612.

Sec. 129-351. Purpose and definition for wetlands.

The City Council finds that there are wetlands within the city which, as part of the ecosystem, are critical to the health, safety and welfare of the land, animals and people within the city. The term "wetlands" shall be as defined by state statute and rule. These wetlands, if preserved and maintained, constitute important physical, aesthetic, recreational and economic assets for existing and future residents of the city. Therefore, the purposes of this article is:

(1) To provide for the protection, preservation, proper maintenance and use of specified wetlands.

(2) To minimize the disturbance to them as to prevent damage from excessive sedimentation, eutrophication or pollution.

(3) To prevent loss of fish and other aquatic organisms, wildlife and vegetation and the habitats of the same.

(4) To provide for the protection of the city's freshwater supplies from the dangers of drought, overdraft, pollution or mismanagement.

(5) To reduce the financial burdens imposed upon the community through rescue and relief efforts occasioned by the occupancy or use of areas subject to periodic flooding and prevent loss of life, property damage and the losses and risks associated with flood conditions.

(6) To preserve the location, character and extent of natural drainage courses.

(Ord. No. 06-2002, § 350.1105, 7-7-2002)

Sec. 129-352. Boundaries for wetlands.

The provisions of this article shall apply to wetland areas as defined by state statute and rule.

(Ord. No. 06-2002, § 350.1115, 7-7-2002)

Sec. 129-353. Wetland permit.

(a) *Required for development.* Except as provided in this article, no person shall perform any development in a wetland without first having obtained a wetland permit as required by state statute and rule.

(b) *Standards.* No permit shall be issued unless the city finds and determines that the proposed development complies with the following standards:

(1) *Dredging.* Dredging may be allowed only when a boat channel is required for access to a navigable lake, for a marina or when it will not have a substantial or significantly adverse effect upon the ecological and hydrological characteristics of the wetland. Dredging, when allowed, shall be limited as follows:

a. It shall be located so as to maximize the activity in the areas of lowest vegetation density.

b. It shall not significantly change the water flow characteristics.

c. The size of the dredged area shall be limited to the absolute minimum.

d. Disposal of the dredged material shall not result in a significant change in the current flow, or in a substantial destruction of vegetation, fish spawning areas or water pollution.

e. Work in the wetland will not be performed during the breeding season of waterfowl or fish spawning season.

f. Only one boat channel or marina shall be allowed per large scale development.

g. In other residential developments, dredging shall be located so as to provide for the use of boats, channels and marinas by two or more adjacent property owners.

h. The width of the boat channel to be dredged shall be no more than the minimum required for the safe operation of boats at minimum operating speed.

(2) *Building constraints.*

a. The lowest floor level or basement elevation shall be at least three feet above the ordinary high-water level of the wetlands.

b. Development which will result in unusual road maintenance costs or utility line breakages due to said limitations, including high frost action, shall not be permitted.

(Ord. No. 06-2002, § 350.1120, 7-7-2002)

Sec. 129-354. Wetland buffers.

When a site is proposed to be developed or redeveloped in a manner that requires a major subdivision, as defined by chapter 121, a natural wetland buffer shall be provided. The minimum buffer width along a wetland or replacement wetland within each lot may range from 50 to 150 percent of the requirement in order to provide flexibility and encourage a natural appearance.

(1) *Wetland buffer widths.* Wetland buffer widths are as follows:

Wetland Size (in acres)	*Buffer Width (in feet)*
0—1.0	16.5
1—2.5	20
2.5—5.0	25
> 5.0	35

(2) *Setbacks.* All structures, roadways, driveways and parking areas must be located outside of the required buffer. Exceptions to the setback include stairways, walkways and trails.

(3) *Protection of wetland buffers.* Wetland buffers can be established by preserving existing natural vegetation, supplementing existing vegetation, or replanting the buffer with native vegetation. The wetland buffer shall be left unmaintained, except when burning to promote its continued health. A delineation of both wetland and buffer edges shall be established through the use of monument markers as approved by the city.

(Ord. No. 06-2002, § 350.1121, 7-7-2002)

Sec. 129-355. Responsibility; effects on wetlands.

(a) *Issuance of permit does not relieve responsibility.* Neither the issuance of a permit nor compliance with the conditions thereof, nor compliance with the provisions of this article shall relieve any persons from any responsibility otherwise imposed by law for damage to persons or property. The issuance of any permit hereunder shall not serve to impose any liability on the city or its officers or employees for injury or damage to persons or property. A permit issued pursuant to this article shall not relieve the permittee of the responsibility of complying with any other requirements established by law, regulation or article.

(b) *Special assessment.* The land within a designated wetlands district area for which a developer or

other restrictive easement is conveyed to the city shall not be subject to special assessments levied by the city to pay the costs of public water, sewer, curb, gutter or other public municipal improvements for which such assessments are authorized pursuant to Minn. Stats. ch. 429.

(c) *Variance.* The City Council may authorize in specific cases, following appeal and hearing, a variance from the provisions of this article where the literal application of the article would result in substantial inequitable hardship to an applicant property owner. In assessing hardship the City Council shall balance the severity of the physical, social and economic effects of the literal application against the interests of the city in effecting the purposes of this article as expressed in subsection (a) of this section. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of this article. No variance may be granted which would allow any use that is prohibited in the zoning district in which the subject property is located. A variance shall be granted in writing accompanied by specific findings of fact as to the necessity for the granting of the variance and its specific provisions. A variance request shall be processed in accordance with the provisions of section 129-39.

(Ord. No. 06-2002, § 350.1125, 7-7-2002)

Sec. 129-356. Fees.

Fees for rezonings, variances, permits, conditional use permits, special permits or other actions requiring administrative time or public expenditures under any section of chapter 129 shall be as established by the city.

(Ord. No. 06-2002, § 350.1130, 7-7-2002)

Secs. 129-357—129-380. Reserved.

ARTICLE VIII. SHORELAND PROTECTION

Sec. 129-381. Authorization and policy.

(a) *Authority.* The shoreland ordinance from which this article is derived is adopted pursuant to the authorization and policies contained in Minn. Stats. § 103F.221, Minn. Rules pts. 6120.2500—6120.3900, and the planning and zoning enabling legislation in Minn. Stats. ch. 462.

(b) *Purpose.* The uncontrolled use of the shorelands of the city affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The state legislature has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental value of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the city.

(Code 1987, § 350.1205)

Sec. 129-382. General provisions.

(a) *Jurisdiction.* The provisions of this article shall apply to the shorelands of the public water bodies as classified in section 129-384. Pursuant to Minn. Rules pts. 6120.2500—6120.3900, no lake, pond, or flowage less than ten acres in size need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the city, be exempt from this article.

(b) *Compliance.* The use of any shoreland or public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems; the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this article and other applicable regulations.

(Code 1987, § 350.1210)

Sec. 129-383. Hearing notices; actions after approval.

(a) *Notice postmarked ten days prior to hearing.* Copies of all notices of any public hearings to

consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

(b) *Final decisions.* A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action. When a variance is approved after the department of natural resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the board of adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.

(Code 1987, § 350.1215

Sec. 129-384. Shoreland classification system and land use districts.

(a) *Public waters of the city classified.* The public waters of the city have been classified as follows consistent with the criteria found in Minn. Rules pt. 6120.3300, and the protected waters inventory map for the county:

(1) The shoreland area for the water bodies listed in subsection (a)(2) of this section shall be as defined in section 129-2, and as shown on the official zoning map.

(2) Lakes.

Recreational Protected Waters

Development Lakes	*Inventory I.D. No.*
Dutch Lake	27-181P
Lake Langdon	27-182P

General Protected Waters

Development Lakes	*Inventory I.D. No.*
Lake Minnetonka	27-133P
Lost Lake	27-180

Natural Protected Waters

Environment Lakes	*Inventory I.D. No.*
Saunders Lake (in Minnetrista)	27-185

(b) *District descriptions.* Within the shoreland area, land use descriptions and allowable land uses therein shall be as identified in sections 129-99 and 129-135. Public, semipublic, commercial and industrial uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal OHWL setback or be substantially screened from view from the water by vegetation or topography, assuming summer leaf-on conditions.

(Code 1987, § 350.1220; Ord. No. 69-1994, 8-29-1994)

Sec. 129-385. Zoning-shoreland management.

(a) *Lot area and width standards.* The lot area and width standards for residential, commercial and industrial lots within the shoreland area shall be as found in the applicable sections of chapter 129, except R-1, R-1A and R-2 lots shall be as follows:

(1) *Lot area.* The lot area standards are as follows:

a. *Lakeshore lots.* The lot area standards for lakeshore lots are as follows:

1. All new single-family detached lots in the R-1, R-1A and R-2 districts created by subdivision must have a minimum lot area of 10,000 square feet. All new two-family and twin homes in the R-2 district created by subdivision must be located on lots having a minimum area of 17,500 square feet.

2. All lots in the R-1 district separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 10,000 square feet.

3. All single-family detached lots in the R-1A and R-2 districts separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 6,000 square feet. All two-family and twin homes in the R-2 district separated through waiver of platting, as defined in section 121-33(2) must be located on lots having a minimum area of 14,000 square feet.

b. *Nonlakeshore lots.* The lot area standards for nonlakeshore lots are as follows:

1. All new lots in the R-1 district created by subdivision must have a minimum lot area of 10,000 square feet.

2. All new single-family detached lots in the R-1A and R-2 districts created by subdivision must have a minimum lot area of 6,000 square feet. All new two-family and twin homes in the R-2 district created by subdivision must be located on lots having a minimum area of 14,000 square feet.

3. All lots in the R-1 district separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 10,000 square feet.

4. All lots in the R-1A and R-2 districts separated through waiver of platting, as defined in section 121-33(2), must have a minimum lot area of 6,000 square feet. All two-family and twin homes in the R-2 district separated through waiver of platting, as defined in section 121-33(2) must be located on lots having a minimum lot area of 14,000 square feet.

(2) *Lot width.* The lot width standards are as follows:

a. *Lakeshore lots.* All single-family detached lots in the R-1A and R-2 districts shall be at least 50 feet in width. All two-family and twin homes lots in the R-2 district shall be at least 90 feet in width.

b. *Nonlakeshore lots.* All single-family detached lots in the R-1A and R-2 districts shall be at least 40 feet in width. All two-family and twin home lots in the R-2 district shall be at least 80 feet in width.

(b) *Redevelopment of existing lot of record.* This subsection shall not be construed to allow the creation of a new, nonconforming buildable lot or a nonconforming lot from a previously conforming lot.

(1) Existing, developed lots of record which are in separate ownership from abutting lands can be redeveloped as long as the requirements of section 129-35, pertaining to nonconforming uses are met.

(2) If, in a group of two or more contiguous lots under the same ownership, any existing vacant lot or existing developed lot:

a. Is smaller than 6,000 square feet and such lot is proposed to be sold, or is proposed to be developed for a single-family detached home; or

b. Is smaller than 14,000 square feet and such lot is proposed to be developed for

a two-family or twin home (either before or after sale), then the lot must be combined with the one or more contiguous lots under the same ownership so that each lot has a minimum lot area:

1. Equal to 6,000 square feet, if subsection (b)(2)a of this section is applicable; or

2. Equal to 14,000 square feet, if subsection (b)(2)b of this section is applicable.

(c) *Additional special provisions.* Subdivisions with dwelling unit densities exceeding those in sections 129-100(b), 129-101(b), 129-102(b) and (c), and 129-103(c) can only be allowed if designed and approved as planned development areas (PDA) under section 129-387. Only land above the ordinary high-water level of public waters can be used to meet lot area standards. Lots of record must meet lot width standards at the building setback line. Lots created after January 1993 must meet lot width standards at both the building setback line and at the ordinary high-water level.

(d) *Placement, design, and height of structures.*

(1) *Placement of structures on lots.* When more than one setback applies to a parcel, structures and facilities must be located to meet all setbacks. Structures shall be located as follows:

a. *Structure setbacks from ordinary high-water level.* Water-oriented accessory structures designed in accordance with subsection (d)(2)b of this section may be set back a minimum of ten feet from the ordinary high-water level.

Lake Classification	*Required Setback**
Natural environment	50 feet
Recreational development	50 feet
General development	50 feet

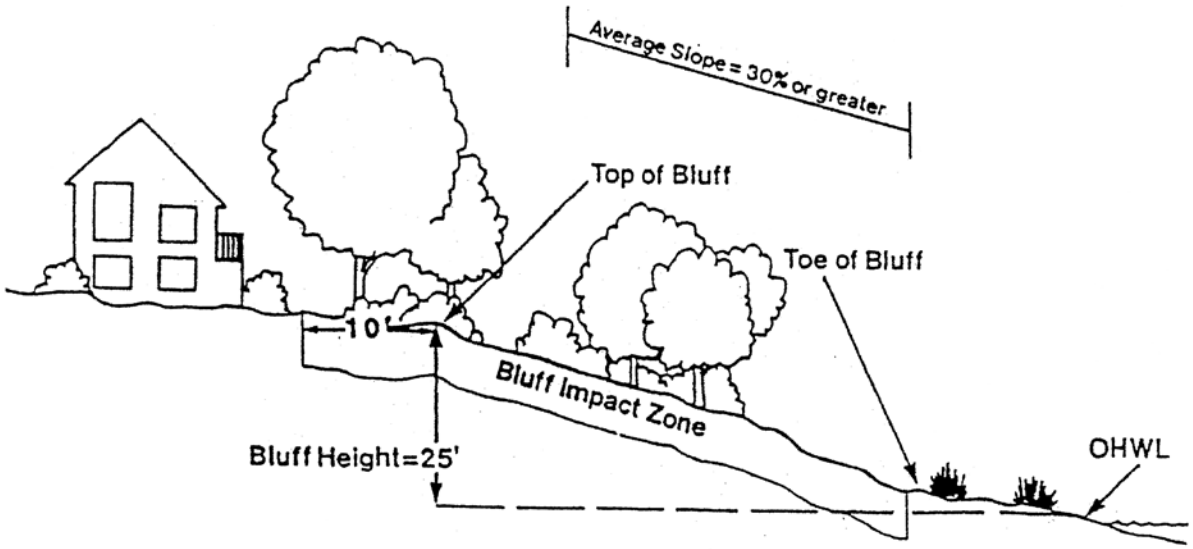
*Retaining walls, fences and docks are allowed subject to other governing provisions within the required 50-foot setback area.

b. *Additional structure setbacks.* The following additional structure setbacks apply, regardless of the classification of the water body:

Setback From	*Setback*
Unplatted cemetery	50 feet
Right-of-way line of federal, state or county highway or local street	20 feet
Top of bluff	
Existing lots of record or lots created through:	
Minor subdivisions (three lots or less) consistent with section 121-35(1)	10 feet
Major subdivisions consistent with section 121-35(2)	30 feet

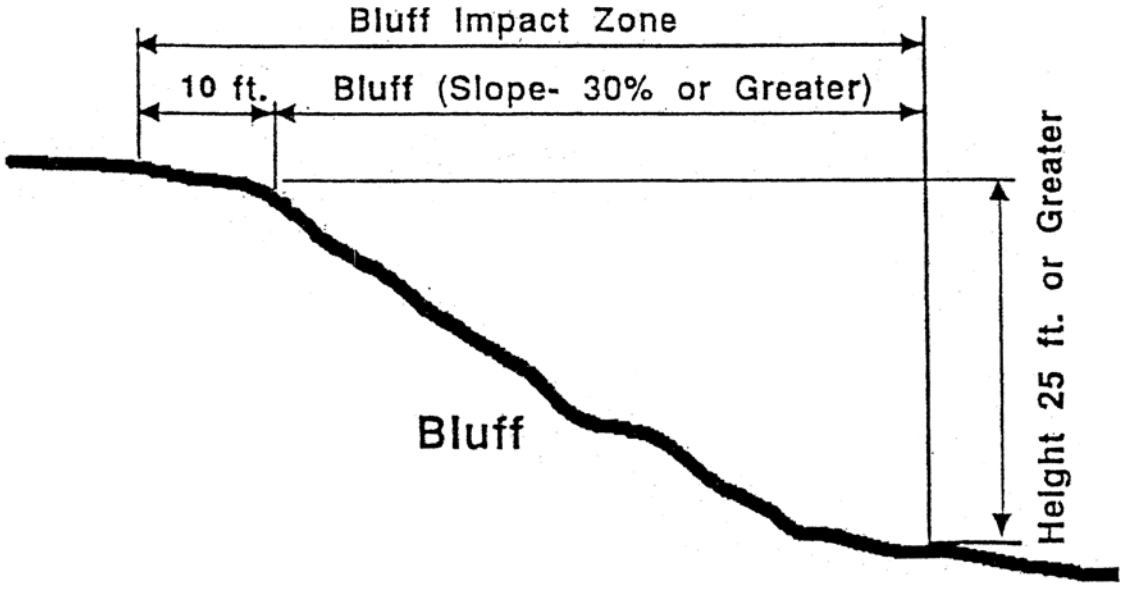
c. *Bluff impact zones.* Stairways and landings shall be allowed within bluff impact zones. Other structures and accessory facilities shall be required to observe a ten-foot setback from the top of the bluff.

Setback From the Top of Bluffs



Bluff Impact Zone

Means the bluff and the land located within 10 feet from the top of the bluff.



(2) *Design criteria for structures.*

a. *High-water elevations.* Structures must be placed in accordance with floodplain

regulations applicable to the site.

b. *Water-oriented accessory structures.* Each lot may have one water-oriented accessory structure on a private lakeshore not meeting the normal structure setback in subsection (d)(1)a of this section if the water-oriented accessory structure complies with the following provisions:

1. An at-grade deck is allowed providing that it does not occupy an area greater than 250 square feet and must not exceed 30 inches above grade at any point.

2. A lockbox is allowed providing that it does not have a total floor area exceeding 20 square feet and does not exceed four feet in height. Where possible, lockboxes shall be positioned such that the narrowest side of the structure is parallel to the ordinary high-water line.

3. The setback of water-oriented accessory structures from the ordinary high-water level must be at least ten feet.

4. Water-oriented accessory structures must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions.

c. *Stairways, lifts, and landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet all of the following design requirements:

1. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned development areas.

2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open space recreational properties, and planned development areas.

3. Canopies or roofs are not allowed on stairways, lifts, or landings.

4. Stairways, lifts, and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.

5. Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.

6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas; provided that they comply with the dimensional and performance standards of subsections (d)(2)c.1 through 5 of this section in addition to the requirements of Minn. Rules ch. 1340.

d. *Significant historic sites.* No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been collected and documented in a public repository. Proposed uses or structures in or around significant historic sites shall be subject to the provisions of state statutes, including, but not limited to, Minn. Stats. § 307.08.

e. *Steep slopes.* The building official and/or city engineer will evaluate possible

soil erosion impacts and development visibility from public waters before issuing a permit for construction of roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions will be attached to permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

(e) *Shoreland alterations.* Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

(1) *Vegetation alterations.*

a. Removal of vegetation necessary for the construction of structures and the construction of roads and parking areas regulated by subsection (e)(2) of this section is exempt from the vegetation alteration standards of this subsection.

b. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in subsections (h)(2) and (3) of this section, is allowed subject to the following standards:

1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is prohibited. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.

2. In shore and bluff impact zones and on steep slopes on private property, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:

(i) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.

(ii) The provisions in this subsection are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

(2) *Topographic alterations/grading and filling.*

a. Grading, filling and excavations necessary for the construction of structures and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit.

b. Public roads and parking areas are regulated by this subsection.

c. Notwithstanding subsections (e)(2)a and b of this section, a grading and filling permit will be required for the annual movement of more than:

1. Ten cubic yards of material on steep slopes or within shore or bluff impact zones; and

2. Fifty cubic yards of material outside of steep slopes and shore and bluff impact zones.

d. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use

permits, variances and subdivision approvals:

1. Grading or filling in any Type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland:
   (i) Sediment and pollutant trapping and retention.
   (ii) Storage of surface runoff to prevent flood damage.
   (iii) Fish and wildlife habitat.
   (iv) Recreational use.
   (v) Shoreline or bank stabilization.
   (vi) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
2. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.
3. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible.
4. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
5. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
6. Fill or excavated material must not be placed in a manner that creates an unstable slope.
7. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater.
8. Fill or excavated material must not be placed in bluff impact zones with the exception of repairs due to erosion or other natural occurrences.
9. Any alterations below the ordinary high-water level of public waters must first be authorized by the commissioner of natural resources.
10. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.
11. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high-water level, and the height of the riprap above the ordinary high-water level does not exceed three feet.

e. *Connections to public waters.* Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors are subject to the requirements of this article. Permission for excavations may be given only after the city has received notification that the commissioner of natural resources has approved the proposed connection to public waters.

(f) *Shoreland management—Placement and design of roads, driveways, and parking areas.*

(1) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided identifying that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the standards and regulations of the Minnehaha Creek watershed district or other applicable agencies.

(2) Roads, driveways, and parking areas must meet structure setbacks. Such facilities shall not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

(3) Public and private watercraft access ramps, approach roads, and access related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subsection are met.

(g) *Same—Standards for stormwater management.* The following general and specific standards shall apply:

(1) *General standards.*

a. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

b. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

c. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used.

(2) *Specific standards.*

a. Impervious surface coverage of lots in residential zones shall not exceed 30 percent of the lot area. On existing lots of record, impervious coverage may be permitted by a maximum of 40 percent providing that the following techniques are utilized as applicable:

1. Impervious areas should be drained to vegetated areas or grass filter strips through the use of crowns on driveways, direction of downspouts on gutters collecting water from roof areas, etc.

2. Dividing or separating impervious areas into smaller areas through the use of grass or vegetated filter strips such as the use of paving blocks separated by grass or sand allowing infiltration.

3. Use grading and construction techniques which encourage rapid infiltration such as the installation of sand or gravel sump areas to collect and percolate stormwater.

4. Install berms to temporarily detain stormwater thereby increasing soil absorption.

b. Impervious surface coverage in lots in the business and industrial zones shall not exceed 30 percent of the lot area. In business and industrial zones that are included within areas covered by an approved stormwater management plan,

impervious surface coverage shall not exceed 75 percent of the total lot area.

c. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the standards and regulations of the Minnehaha Creek watershed district.

d. New stormwater outfalls to public waters must provide for the filtering or settling of suspended solids and the skimming of surface debris before discharge.

(h) *Same—Special provisions for commercial, industrial, public/semipublic, agricultural and forestry.*

(1) *Standards for commercial, industrial, public, and semipublic uses.* Surface water-oriented and nonsurface water-oriented commercial uses and industrial, public, or semipublic uses may be located on parcels or lots with frontage on public waters. Such uses must meet the following standards:

a. In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this article, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.

b. Uses that require shortterm watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need.

c. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:

1. No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff.

2. Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters.

3. Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

(2) *Agricultural use standards.* General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (Resource Management Systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high-water level.

(3) Forest management standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment Forestry and the provisions of Water Quality in Forest Management Best Management Practices in Minnesota.

(Code 1987, § 350.1225; Ord. No. 69-1994, 8-29-1994; Ord. No. 19-2006, 10-29-2006; Ord. No. 03-2007, 2-13-2007)

Sec. 129-386. Nonconformities and conditional uses.

(a) *Nonconformities.* All legally established nonconforming uses and structures shall be subject to the provisions of section 129-35.

(b) *Conditional uses.* Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses established in section 129-38. The following additional evaluation criteria and conditions apply within shoreland areas:

(1) *Evaluation criteria.* A thorough evaluation of the water body and the topographic, vegetation, and soils conditions on the site must be made to ensure:

a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.

b. The visibility of structures and other facilities as viewed from public waters is limited.

c. The site is adequate for water supply and public sewage treatment.

d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

(2) *Conditions attached to conditional use permits.* The city, upon consideration of the criteria listed above and the purposes of this article, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this article. Such conditions may include, but are not limited to, the following:

a. Increased setbacks from the ordinary high-water level.

b. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.

c. Special provisions for the location, design, and use of structures, watercraft launching and docking areas, and vehicle parking areas.

(Code 1987, § 350.1230)

Sec. 129-387. Planned development areas (PDA).

(a) *Provisionally allowed.* Planned development areas are allowed in shoreland areas subject to the provisions of section 129-195 and subject to the additional provisions contained herein.

(b) *Site suitable area evaluation.* Proposed new or expansions to existing planned development areas must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit density evaluation in subsection (c) of this section.

(1) The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high-water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions	*Intervals (in feet)*
General development lakes, first tier	200
General development lakes, second and	267

Shoreland Tier Dimensions additional tiers	*Intervals (in feet)*
Recreational development lakes	267
Natural environment lakes	320

(2) The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high-water level of public waters. This suitable area and the proposed project are then subjected to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.

(c) *Residential PDA density evaluation.* The procedures for determining the base density of a PDA and density increase multipliers as stated in subsection (d) of this section. Allowable densities may be transferred from any tier to any other tier further from the water body, but must not be transferred to any other tier closer. The suitable area within each tier is divided by the single residential lot size standard (10,000 square feet). Proposed locations and numbers of dwelling units or sites for the residential planned development areas are then compared with the tier, density, and suitability analyses herein and the design criteria in subsection (e) of this section.

(d) *Density increase multipliers.* The following density increase multipliers shall apply:

(1) Increases to the dwelling unit base densities previously determined are allowable if the dimensional standards in section 129-385 are met or exceeded and the design criteria in section 129-385(e) are satisfied. The allowable density increases in subsection (d)(2) of this section will only be allowed if structure setbacks from the ordinary high-water level are increased to at least 50 percent greater than the minimum setback, or the impact on the water body is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the city and the setback is at least 25 percent greater than the minimum setback.

(2) Allowable dwelling unit increases for residential planned development areas:

	Maximum Density
Density Evaluation Tiers	*Increase Within Each Tier (in percent)*
First	50
Second	100
Third	200
Fourth	200
Fifth	200

(e) *Maintenance and design criteria.*

(1) *Maintenance and administration requirements.*

a. *Prior to final approval.* Before final approval of a planned development area, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.

b. *Open space preservation.* Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure longterm preservation and maintenance of open space. The instruments must include all of the following protections:

1. Commercial uses are prohibited.

2. Vegetation and topographic alterations other than routine maintenance

are prohibited.

3. Construction of additional buildings or storage of vehicles and other materials is prohibited.

4. Uncontrolled beaching of watercraft is prohibited.

c. *Development organization and function.* Unless an equally effective alternative community framework is established, all residential planned development areas must use an owners association with the following features:

1. Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers.

2. Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units.

3. Assessments must be adjustable to accommodate changing conditions.

4. The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

(2) *Open space requirements.* Planned unit developments must contain open space meeting all of the following criteria:

a. At least 50 percent of the total project area must be preserved as open space.

b. Dwelling units, road rights-of-way, or land covered by road surfaces, parking areas, or other structures, are developed areas and shall not be included in the computation of minimum open space.

c. Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries.

d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests, and by the general public.

e. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means.

f. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PDAs, at least 70 percent of the shore impact zone area must be preserved in its natural or existing state.

(3) *Erosion control and stormwater management.* Erosion control and stormwater management plans must be developed and the PDA must:

a. Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant.

b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within the first tier must not exceed 30 percent of the tier area and the impervious surface coverage of the entire PDA must not exceed 30 percent.

(4) *Centralization and design of facilities.* Centralization and design of facilities and

structures must be done according to the following standards:

a. Dwelling units must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification:

   1. Setback from the ordinary high-water level;

   2. Elevation above the surface water features; and

   3. Maximum height.

   Setbacks from the ordinary high-water level must be increased in accordance with subsection (d) of this section for developments with density increases.

b. Shore recreation facilities, including, but not limited to, swimming areas, docks, and watercraft mooring areas, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors.

c. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the local unit of government, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided.

d. Accessory structures and facilities, except water oriented accessory structures, must meet the required principal structure setback and must be centralized.

e. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in section 129-385(d) and are centralized.

(Code 1987, § 350.1235)