

Chapter 1

GENERAL PROVISIONS

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Afton, Minnesota."

(Code 1982, § 101.101)

State law reference(s)--Codification, M.S.A. § 415.021.

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

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council:

Agent or employee. Whenever the Code requires an act to be done, which act may legally be done by an agent or employee as well as by the principal, such requirement shall be satisfied by the performance of such act by an authorized agent or employee.

City. The word "city" shall mean the City of Afton, Minnesota, and shall extend to and include its several officers, agents and employees.

City Council; council. The terms "City Council" and "council" shall mean the City Council of the City of Afton, Minnesota.

Code. The word "Code" shall mean the Code of Ordinances, City of Afton, Minnesota as designated in section 1-1.

Computation of time. The time, where the performance or doing of any act, duty, matter, payment or thing is ordered or directed and the period of time or duration for the performance or doing thereof is prescribed and fixed by law or ordinance, shall be computed so as to exclude the first and include the last day of the prescribed period or duration of time. When the last day of the period falls on a Saturday, Sunday or legal holiday, that day shall be omitted from the computation.

County. The word "county" shall mean the County of Washington, Minnesota.

Gender. A word importing either the masculine or feminine gender shall extend and be applied to both the masculine and feminine genders, and to firms, partnerships and corporations.

Joint authority. Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

Keeper and proprietor. The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and co-partnerships, whether acting by themselves or through a servant, agent or employee.

Month. The word "month" shall mean a calendar month.

M.S.A. The abbreviation "M.S.A." shall mean and refer to the latest edition or supplement of Minnesota Statutes Annotated.

Number. A word importing the singular may extend and be applied to the plural, and vice versa.

Oath. The word "oath" shall include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

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Officer, employee, department, board, commission or other agency. Whenever any officer, employee, department, board, commission or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Afton, Minnesota." Whenever, by the provisions of this Code, any officer, employee, department, board, commission or other agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee, department, board, commission or other agency shall mean and include such officer or any designee or authorized subordinate and shall also include the successor in function to such officer, employee, department, board, commission or agency.

Or, and. The word "or" may be read as "and" and the word "and" may be read as "or" where the sense requires it.

Owner. The word "owner" when applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

Person. The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal property. The term "personal property" shall include every species of property except real property.

Property. The word "property" shall include real, personal and mixed property.

Public place. The term "public place" shall mean any place subject to the primary control of any public agency, including but not limited to any park, street, public way, cemetery, schoolyard or open space adjacent thereto and any lake or stream.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Shall, may. The word "shall" is mandatory; the word "may" is permissive.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians.

State. The word "state" shall mean the State of Minnesota.

Street. The word "street" shall embrace streets, avenues, boulevards, roads, highways, alleys, lanes, viaducts and all other public ways in the city.

Tenant; occupant; lessee. The words "tenant," "occupant" and "lessee," when applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or part of, such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Words and phrases. The words and phrases shall be construed in their plain, ordinary and usual sense, except that technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

Written and in writing. The words "written" and "in writing" shall include any representation of words, letters or figures, whether by printing or otherwise.

(Code 1982, § 102.101--103.103)

State law reference(s)--Construction of words and phrases, M.S.A. § 645.08 et seq.; definitions of words and phrases, M.S.A. § 645.44 et seq.

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Sec. 1-3. Catchlines of sections.

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

Sec. 1-4. References to chapters or sections.

All references to chapters or sections are to the chapters and sections of this Code unless otherwise specified.

Sec. 1-5. History notes.

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-6. References and editor's notes.

References and editor's notes following certain sections of this Code are inserted as an aid and guide to the reader and are not controlling nor meant to have any legal effect.

Sec. 1-7. Code does not affect prior offenses, penalties and rights.

Nothing in this Code or the ordinances adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

Sec. 1-8. Effect of repeals.

The repeal of an ordinance or portion of this Code shall not revive any ordinance or portion of this Code in force before or at the time the provision repealed took effect. The repeal of an ordinance or a portion of this Code shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the provision repealed.
(Code 1982, § 102.109)

Sec. 1-9. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred before the effective date of this Code.
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city, or authorizing the issue of any bonds of the city, or any evidence of the city's indebtedness, or any contract, right, agreement, lease, deed or other instrument or obligation assumed by the city.
- (3) Any administrative ordinances of the city not in conflict or inconsistent with the provisions of this Code.
- (4) Any right or franchise granted by any ordinance.
- (5) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way in the city.
- (6) Any appropriation ordinance.
- (7) Any ordinance levying or imposing taxes.

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- (8) Any ordinance prescribing fees, fines, charges, rates, or other specific monetary values.
- (9) Any ordinance annexing territory or excluding territory or any ordinance extending the boundaries of the city.
- (10) Any ordinance establishing traffic or parking regulations on any street or public way, including traffic schedules.
- (11) Any ordinance regarding salaries or compensation of city officers or employees.
- (12) Any temporary or special ordinances.
- (13) Resolution No. 1995-6, adopted August 15, 1995, imposing a moratorium on certain development within the city for an interim period.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. All ordinances are on file in the office of the city clerk.

Sec. 1-10. Amendments to Code.

(a) Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the City Council to make such additions or amendments a part of this Code, shall be deemed to be incorporated in this Code so that reference to the Code shall be understood and intended to include such additions and amendments.

(b) All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, Article, division, section or subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages.

(c) Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in substantially the following language: "That section _____ of the Code of Ordinances, City of Afton, Minnesota, is hereby amended to read as follows:" The new provisions shall then be set out in full.

(d) If a new section not then existing in the Code is to be added, the following language may be used: "That the Code of Ordinances, City of Afton, Minnesota, is hereby amended by adding a section to be numbered _____, which section reads as follows:" The new section may then be set out in full.

(e) All sections, divisions, Articles, chapters or provisions desired to be repealed must be specifically repealed by section, division, Article or chapter number, as the case may be.

Sec. 1-11. Supplementation of Code.

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

(b) In preparing a supplement to this Code, all portions of the Code which 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 codifier, meaning the person authorized to prepare the supplement, may make formal, non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

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- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of supplement, and make changes in catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this Article," "this division," or "this section," as the case may be, or to "sections _____ through _____." The inserted section numbers will indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code; and
- (5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-12. Severability of parts of Code.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Sec. 1-13. General penalty.

(a) Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provision of this Code or city ordinance shall be punished as a misdemeanor, that is with a fine of up to \$1,000.00 or imprisonment for not more than 90 days or by both such fine and imprisonment, or a voluntary administrative penalty may be issued and followed up by a criminal misdemeanor if the alleged violation is not paid, unless otherwise provided in this Code. The term "misdemeanor" shall be as defined in M.S.A. § 609.02, subd. 3. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense.

(Ord. 03-2013, § 1-13 (a))

(b) In case of the amendment by the City Council of any section of this Code for which a penalty is not provided, the general penalty as provided in subsection (a) of this section shall apply to the section as amended; or in case such amendment contains provisions for which a specified penalty other than the aforementioned general penalty is provided in another section in the same chapter, the penalty so specified shall be held to relate to the amended section, unless such penalty is specifically repealed therein.

(Code 1982, § 104.101)

(c) Voluntary Administrative Penalty

- (1) The City Council is authorized to create by resolution, adopted by a majority of the members of Council, supplemental administrative penalties.
- (2) The administrative penalty procedures in this section are intended to provide the public and the city with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of certain provisions of this code. The procedures are intended to be voluntary on the part of those who have been charged with those offenses.
- (3) Administrative penalties for violations of various provisions of the code, other than those penalties established in the code or in statutes that are adopted by reference, may be established from time to

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time by resolution of a majority of the members of the City Council. In order to be effective, an administrative penalty for a particular violation must be established before the violation occurred.

- (4) In the discretion of the City Administrator or other person giving notice of an alleged violation of a provision of this code, in a written notice of an alleged violation, sent by first class mail to the person who is alleged to have violated the code, the person giving notice may request the payment of a voluntary administrative penalty for the violation directly to the City within seven (7) business days of the notice of the violation. For each day a violation exists shall constitute as a separate offense.
- (5) In addition to the administrative penalty, the person giving notice may request in the notice to the alleged violator to adopt a compliance plan to correct the situation resulting in the alleged violation and may provide that if the alleged violator corrects the situation resulting in the alleged violation within the time specified in the notice, that the payment of any administrative penalties, only after the first day, will be waived.
- (6) At any time before the payment of the administrative penalty is due, the person who has been given notice of an alleged violation may request to appear before the City Council to contest the request for payment of the penalty. After a hearing before the Council, the Council may determine to withdraw, reduce, or renew the request for payment. Because the payment of an administrative penalty is voluntary, there shall be no appeal from the decision of the Council.
- (7) At any time after the date the payment of the administrative penalty is due, if the administrative penalty remains unpaid or the situation creating the alleged violation remains uncorrected, the City, through its Attorney, may bring criminal charges in accordance with state law and this code. Likewise, the City, in its discretion, may bring criminal charges in the first instance, rather than requesting the payment of an administrative penalty, even if a penalty for the particular violation has been established by Council resolution. If the administrative penalty is paid, or if any requested correction of the situation results in the violation is completed, no criminal charges shall be initiated by the City for the alleged violation.

d) Effective Date. This Ordinance shall become effective July 20, 2005.

(Ord. 2005-9, Sec. 1-13(a)(b)(c)(d), 3/15/05)

State law reference(s)--Authority to adopt penalty of up to \$1,000.00, M.S.A. § 609.02, subd. 3.

Chapter 2

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***Cross references** – Administration of zoning ordinance, § 12-76 et seq.; administration of shoreline management ordinance, § 12-326 et seq.; administration of floodplain regulations, § 12-1191 et seq.; administration of individual sewage treatment systems by state agencies, § 12-2151.

State law reference – Statutory cities, M.S.A. Ch. 412.

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ARTICLE I. IN GENERAL

Sec. 2-1. Date of city elections.

The regular city election shall be held biennially in even years on the same day as the general election for state and national offices.

(Code 1982, § 202.101)

State law reference – City elections, M.S.A. §§ 205.01 et seq., 412.02 et seq.

Sec. 2-2. Ward boundaries.

Pursuant to M.S.A. § 205.84, the City Council has considered the results of the 2000 Federal Decennial Census and the distribution of population within the City of Afton as indicated therein for the purpose of redefining the boundaries of city wards so that all wards shall be as equal in population as practicable, and each ward shall be composed of compact, contiguous territory. The boundaries for the four city wards shall be described on the official Ward Boundary/Precinct Boundary map of the City of Afton and a legal description of each ward shall be on file and available in the city offices.

(Code 1982, § 203.101; Ord 1997-53, § 2-2, 4/16/2002)

State law reference – Ward boundaries in statutory cities, M.S.A. § 205.84

Sec. 2-3. Precinct Boundaries.

Each Precinct shall be co-terminus with each respective Ward.

(Ord 1997-53, § 2-3, 4/16/2002)

Secs. 2-4--2-35. Reserved.

ARTICLE II. CITY COUNCIL*

Sec. 2-36. Mayor and councilmember salaries.

The mayor and each councilmember of the city shall be paid a salary which shall be set from time to time in accordance with state statute.

(Code 1982, § 206.101)

Cross reference – Any ordinance regarding salaries or compensation of officers or employees saved from repeal, § 1-9(11).

State law reference – Salaries of governing body, M.S.A. § 415.11.

Secs. 2-37--2-55. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Secs. 2-56--2-75. Reserved.

DIVISION 2. CITY ADMINISTRATOR

Sec. 2-76. Office created; powers and duties.

(a) The office of clerk and treasurer are abolished and replaced with the office of clerk-treasurer to be referred to as "the city administrator." The duties as prescribed under M.S.A. Ch. 412 of the city clerk and treasurer shall be assumed by and consolidated into a newly created position of city administrator.

***State law reference** – Powers of council in statutory cities, M.S.A. §§ 412-191 – 412.231.

†**State law reference** – Officers and employees in statutory cities, M.S.A. §§ 412.101 – 412.151.

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(b) The city administrator shall serve at the pleasure and discretion of the City Council and report directly to the City Council. All other offices and positions created by the City Council, with the exception of the city attorney, shall report to the City Council through the city administrator.

(c) The city administrator shall be assisted in managing the day-to-day operations of the city by a deputy clerk, office assistant and building official.

(d) The deputy clerk, office assistant, building official and such other employees of the city as may be appointed from time-to-time, shall report directly to the city administrator.

(e) The city administrator shall be responsible for the day-to-day operations of the city, including the management and supervision of the deputy clerk, office assistant, and any other full or part-time employees as may be appointed by the City Council.

(Code 1982, § 209; Res. No. 1997-16, § 7, 6-17-97; Res. No. 1997-18, 6-17-97)

Secs. 2-77--2-100. Reserved.

DIVISION 3. CITY ATTORNEY

Sec. 2-101. To report to council.

The city attorney shall report directly to the City Council.
(Code 1982, § 209)

Secs. 2-102--2-110. Reserved.

DIVISION 4. BUILDING OFFICIAL*

Sec. 2-111. Office created; powers and duties.

(a) The office of the building official is hereby established. The building official is the code enforcement officer and the zoning administrator and enforces the city Code.

(b) The essential functions of the building official shall be as follows:

- (1) Review plans and specifications for all types of buildings, structures, HVAC and plumbing and calculate fees and state surcharges where required. Inspect buildings, structures and property to ensure compliance with such plans and specifications and other state and city codes, environmental health and safety regulations and the zoning regulations in chapter 12, Article II. Conduct foundation, framing, structural, plumbing, heating and air conditioning and other required inspections.
- (2) Administer building permit procedures. Provide information concerning building permit procedures and standards on a daily basis to residents, businesses, developers, architects and others involved in building construction activities.
- (3) Conduct all necessary inspections for zoning permits (special and conditional uses, signs, fences, farm site plans, design review, variances, etc.,) and such other permits as may be required by the city Code.
- (4) Enforce codes by receiving and investigating complaints concerning alleged code violations. Meet with property owners or tenants to inform them of specific violations and necessary corrective measures. Prepare reports on such violations for the city administrator, planning commission, City Council and city attorney, as necessary. Assist in the preparation and issuance of violation notices to violators.
- (5) May keep records, blueprints, permits and maps of sewer systems and appurtenances, service lines and pumps; ensure inspection of systems; and issue permits for ISTS.

*Cross reference – Buildings and building regulations, § 12-1771 et seq.

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- (6) Work with residents, contractors, architects, developers, the city staff, fire department and other agencies and departments concerning permit applications, work in progress and questions relating to codes and regulations. Assist in revision of plans, reviews by consultants, coordination of consultants and related reviews, permits or inspections.
 - (7) Assist in preparations of the departmental budget and in maintaining budgetary control, maintain records and prepare reports.
 - (8) Establish and maintain all records, pertinent files and necessary reports on all permits, zoning actions, Code violations and other related development activities, including notices, correspondence, minutes and ordinances.
 - (9) Assist the city administrator in the development and maintenance of a GIS system, policy and ordinance revisions and land use planning procedures and controls.
 - (10) Prepare monthly and annual reports on construction activities to regional, state and federal agencies and to the City Council.
 - (11) Keep abreast of new equipment, materials, technologies and construction practices, as well as new or changing codes, regulations and enforcement procedure; and recommend changes in policies and ordinances to the city administrator.
 - (12) Attend City Council and planning commission meetings, as needed, to present recommendations and findings.
 - (13) Perform related work as required.
- (c) The building official shall report directly to the city administrator.
- (d) All other requirements for this position shall be set forth in the job description.
(Res. No. 1997-16, §§ 2, 7, 6-17-97; Res. No. 1997-18, 6-17-97)

Secs. 2-112--2-125. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS AND COMMITTEES*

DIVISION 1. GENERALLY

Secs. 2-126--2-130. Reserved.

DIVISION 2. PLANNING COMMISSION†

Sec. 2-131. Established.

A planning commission for the city is hereby established pursuant to M.S.A. §§462.351-462.364.
(Code 1982, § 204.101)

Sec. 2-132. Members generally.

The members of the planning commission shall be appointed by a majority of the city council. The council shall appoint nine (9) members to the planning commission.

- (a) *Composition.* Each ward shall be continually represented by at least one member residing in such ward, with no more than 3 members from any one ward.
- (b) *Qualifications.* Every member shall be a registered voter in the city, and before entering upon disposition of their duties, each member shall take an oath that they will faithfully perform the duties of office.

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(c) *Compensation.* All members shall serve without compensation.

(d) *Ex-officio member.* They city council shall appoint one of its members to serve as an ex-officio member of the planning commission. Such council member shall not have a vote in any proceedings, nor hold any office in the commission.

(Code 1982, § 204.102; Ord. 3-2009, 4/21/09)

Sec. 2-133. Terms of office.

The members of the planning commission shall be appointed for overlapping terms of three years, effective February 15 of each year.

(Ord. 1997-57, 1/21/03; Ord. 2006-11, 11/21/06)

Sec. 2-134. Terminations.

Any planning commission member's term shall terminate upon his resignation, or upon his ceasing to reside within the city, or it by reason of his change of residence a ward ceases to be represented, or by four/fifths (4/5) vote of the city council for cause. Cause shall include, but not be limited to, having more than three absences or more than one unexcused absence in any one calendar year. The council may consider exceptional circumstances when applying this rule.

Sec. 2-135. Vacancies.

The city council shall fill any vacancy occurring in the membership of the planning commission by appointment for the unexpired term of such vacancy.

(Ord 1997-50, 8/22/00)

Sec. 2-136. Officers.

The members of the planning commission shall elect a chairperson, a vice-chairperson and a secretary from among its appointed members at the annual meeting each year, for a term of one year. The chairperson shall preside at all meetings of the commission, is present, and shall perform all other duties and functions assigned by the commission or the city council. The vice chairperson shall perform these duties in the absence of the chairperson. If a vacancy occurs in the chairperson's office, the vice-chairperson shall assume the chairperson's duties for the remainder of the year, and a new vice chairperson shall be elected by the commission at a special election to be held at the next regularly scheduled commission meeting, after at least three days written notice to each commission member. The secretary shall take the minutes of the commission meetings.

Sec. 2-137. Duties and powers.

The planning commission shall be the planning agency of the city and shall have the powers and duties given such agencies generally by M.S.A. §§ 462.351—462.364, together with the following:

(a) The commission shall exercise the duties and powers conferred upon it by any ordinance of the city now existing or hereafter enacted.

(b) It shall be the duty of the commission to study and make its recommendation to the city council concerning the following:

- (1) A comprehensive plan for the land use of the city;
- (2) All applications for special use permits, rezoning, variances, other zoning permits and other related matters;
- (3) Proposed plat; minor subdivisions, parks and open spaces plans;

***Cross references** – Board of adjustment, § 12-1194; board of adjustment and appeals, § 12-2082,

†**Cross reference** – Land use, Ch. 12.

ADMINISTRATION

(4) Laying out of streets and public ways and other related matters;

(c) The commission shall undertake studies and recommend actions on such planning matters as the city council may from time to time refer to the commission.

(d) The commission shall have the power to hold a public hearing upon any application for a special use permit, rezoning or amendment to the zoning ordinance, upon ten days public notice.

(e) The commission shall have the power to form and appoint committees to carry out its duties and powers, including, but not limited to committees for zoning, parks, open spaces, natural resources and capital improvements.

(Code 1982, § 204.107)

Sec. 2-138. Zoning ordinances: public hearings.

No zoning ordinance or amendment thereto, shall be adopted by the city council until a public hearing has been held thereon by the planning commission upon notice as provided in M.S.A. § 462.357, subd.3 and 4. The record of the public hearing by the planning commission shall include the name of every person speaking for or against the proposal and a summary of the testimony of each witness.

Sec. 2-139. Annual work plan.

The planning commission shall meet with the City council at their annual meeting in January to develop an annual work plan, including a list of projects, points of interaction on projects, programs and goals for the year. (Res. 1996-48, §210.108, 12-17-96; Res. 1997-16, §3, 6-17-97)

Sec. 2-140. Regular meetings.

- (a) The planning 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 regulations, transactions, and findings, which shall be a public record. Expenditures of the commission shall be within amounts appropriated for the purpose by the city council.
- (b) No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date. A regular meeting may be canceled or rescheduled by the commission at a prior meeting or if there are no scheduled agenda items, ten days prior to the meeting.
- (c) All action taken by the commission shall be by the affirmative vote of a majority of the members present.

Sec. 2-141. Special meetings.

Special meeting of the planning commission shall be held in the city hall at a time and designated or at a public place at the time designated and shall be called by the chairperson. Upon the written request of at least three members, the chairperson shall be required to call a special meeting to be held within seven days of the request. Written notice thereof shall be given to all members not less than three days in advance of the meeting.

Sec. 2-142. Quorum.

A quorum of the planning commission shall consist of a simple majority.

Sec. 2-143. Voting.

Each member of the planning commission attending any meeting shall be entitled to cast one vote. Voting shall be by voice vote. If any member shall have a personal interest of any kind in the matter then before the commission, he shall disclose this interest and be disqualified from voting upon the matter, and the secretary shall record in the minutes that no vote was cast by such member.

Sec. 2-144. Proceedings.

At any regular meeting of the planning commission, the following shall be the regular order of business:

- (1) Roll call.
- (2) Minutes of the preceding meeting.
- (3) Approval of agenda.
- (4) Public hearings as scheduled on the agenda.
- (5) Other business.
- (6) Adjournment.

Sec. 2-145. Rules of procedure.

All meetings of the planning commission shall be conducted in accordance with the Revised Robert's Rules of Order.

Sec. 2-146. Agendas.

The city administrator shall cause all items to be considered at any regular meeting to be placed on a written agenda ten days before the regular meeting. The city administrator shall advise the chairperson of any matters the commission must consider by council directive, ordinance or statute and shall have prepared and mailed a written agenda of all meetings to all commission members, the city council and the public, no less than five days before each meeting.

Sec. 2-147. Records.

Each formal action of the planning commission shall be embodied in full upon the minute book as a formal motion or resolution after an affirmative vote as provided in this division. The minutes of each meeting shall be provided to each member, the City council and the public no more than seven days after the date of each meeting. The recommendations and findings of the commission shall be presented to the City council at the next regularly scheduled City council meeting. The record of meetings, actions and recommendations shall be transmitted to the City Administrator for keeping and distribution.

Sec. 2-148. Member training.

The planning commission members shall be encouraged to avail themselves of training courses offered by the city, the state and other government and public training agencies and the city council shall budget for the reimbursement of expenses incurred in training each year.
(Ord 1997-50, 8/22/00)

DIVISION 3. HERITAGE PRESERVATION COMMISSION*

Sec. 2-150. Established; members.

There is hereby created and established a city heritage preservation commission which shall consist of no more than nine (9), but no fewer than five (5) members. One (1) shall be appointed directly by the Afton Historical Society and the other members shall be appointed by the City Council. Any member appointed to serve on the preservation commission shall have a demonstrated interest and/or expertise in historic preservation. At least two members must be professional in a field related to preservation (architecture, history, planning, design, construction, law, and so forth).
(Code 1982, § 308.000(3)1; Res. No. 1997-16, § 3, 6-17-97; Ord. 1997-51, 1/16/01; Ord. 2005-4, 4/19/05; Ord. 12-2010, 12/21/10)

Sec. 2-151. Terms of office.

All appointments to the commission shall be made for a term of three years. Members may be reappointed for consecutive terms. Members shall serve without compensation and continue to hold office until their successors have been appointed and qualified.

ADMINISTRATION

(Code 1982, § 308.000(3)2; Res. No. 1997-16, § 3, 6-17-97; Ord. 12/2010, 12/21/10)

Sec. 2-152. Organization.

The commission, when formed, shall elect from its members such officers as it may deem necessary. The commission shall have the power to designate and appoint from its members various committees. The commission shall make such bylaws as it may deem advisable and necessary for the conduct of its affairs, for the purpose of carrying out the intent of this Article, which are not inconsistent with the laws of the city and the state. The commission shall make an annual report, containing a statement of its activities and plans to the City Council. The Heritage Preservation Commission shall also function as the design and review committee, of which the duties of the committee are specified in section 12-142 (g).
(Ord. 2006-02, 6/6/06)

Sec. 2-153. Program assistance.

To accomplish the intent and purpose of this Article the city shall provide the commission with staff support to perform the duties prescribed under this Article.

Sec. 2-154. Designation of heritage preservation sites.

(a) *Reports.* The City Council, upon request of the commission, may direct the city staff or commission to prepare studies which catalog buildings, land, areas, districts, or other objects to be considered for designation as a heritage preservation site.

(b) *Criteria.* The commission shall recommend to the City Council areas, buildings, districts or objects to be designated heritage preservation sites. In considering the designation of heritage preservation sites the commission shall apply the following stated criteria and other applicable criteria that may be established by the secretary of the interior from time to time:

- (1) Its character, interest or value as part of the development, heritage or cultural characteristics of the city, state, or the United States.
- (2) Its location as a site, or contributing element in proximity to a site of a significant historic event or process.
- (3) Its embodiment of distinguishing characteristics of architectural style, period, form or treatment.
- (4) Its identification with a person or persons who significantly contributed to the culture and development of the city.
- (5) Its embodiment of elements of architectural design, detail, materials, or craftsmanship which represents distinctive architectural innovation.
- (6) Its unique location or singular physical characteristics representing an established and familiar aspect of view, vista, site, area, or district in the city.

***Cross reference** – Heritage preservation, § 12-1526 et seq

Sec. 2-155. Owner consent.

No heritage preservation site shall be designated by the heritage preservation commission without the consent of the property owner.

Sec. 2-156. Intra-city communication.

The heritage preservation commission shall establish and maintain communications with the planning commission and others interested in or affected by a heritage preservation site designation.
(Code 1982, § 308.000(6); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-157. Findings and recommendations.

The heritage preservation commission shall determine if a proposed heritage preservation site is eligible for preservation as determination by the criteria specified by this Article and applicable secretary of the interior standards, and current procedure as recommended by the state historic preservation office and if the heritage preservation commission recommends to the City Council that the site be recommended for heritage preservation site designation.
(Code 1982, § 308.000(7); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-158. Council designation, hearings.

The City Council, upon the request of the heritage preservation commission, may by resolution designate a heritage preservation site. Prior to such designation the City Council shall hold a public hearing, notice of which shall have been published in a newspaper of general circulation at least ten days prior to the date of the hearing, and mailed notice of the hearing sent to the owner of property which is proposed to be designated a heritage preservation site and to all owners of property lying immediately adjacent to the proposed heritage preservation site.

(Code 1982, § 308.000(8); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-159. Communication with state historical society.

Prior to designating a proposed heritage preservation site, the commission shall forward information concerning the proposed designation to the state historical society for comment within 60 days. The decision of the heritage preservation commission and City Council shall be sent to the state historical society in accordance with M.S.A. § 471.193, subd. 5.

(Code 1982, § 308.000(9); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-160. Acquisition.

The heritage preservation commission may recommend to the City Council that certain property eligible for designation as a heritage preservation site be acquired by gift, by negotiation, or other legal means.

(Code 1982, § 308.000(10); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-161. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified in this Article:

- (1) The commission shall conduct a continuing survey of all areas, places, buildings, structures, or objects in the city which the commission, on the basis of information available or presented to it, has reason to believe are significant to cultural, social, economic, political, or architectural history of the city.
- (2) Following designation of a heritage preservation site, the commission shall act as a resource and in an advisory capacity to owners of such properties regarding preservation, restoration and rehabilitation activities. Commission activity in this regard shall include participation in the planning and implementation of activities within the downtown historic district and designated adjacent properties and other local heritage preservation sites.
- (3) The commission shall work for the continuing education of the citizens of the city with respect to the civic and architectural heritage of the city. It shall keep current and public a register of all properties which have been designated heritage preservation sites, along with the plans and programs that pertain to them.
- (4) With prior approval of the City Council, the commission may have authority to accept gifts and contributions to be made to the city and to assist the city staff in the preparation of applications for grant funds to be made by the city for the purpose of heritage preservation. Any contributions or gifts will be expended in the manner provided through the fiscal policy of the city.
- (5) The commission shall on a continuing basis collect and review all records and studies, to be entered into the historical museum as a permanent record of city history and development.
- (6) At the discretion of the commission, public hearings may be initiated to solicit public input regarding proposed activities to a heritage preservation site.

(Code 1982, § 308.000(11); Res. No. 1997-16, § 3, 6-17-97)

ADMINISTRATION

Sec. 2-162. Review of permits.

The commission shall review all activities which are proposed for a heritage preservation site within the city. The commission shall review activities in accordance with this Article and bylaws as adopted by the commission.

- (1) To initiate review by the commission, the owner or designated representative of a heritage preservation site shall prepare and submit plans to the city detailing all proposed activities. Upon receipt of such plans and refundable fee in accordance with the bylaws established by the commission, the proposed activities shall be considered by the commission.
- (2) Following review of the proposed activities and detailed plans and application of the design review guidelines, the commission shall forward its recommendation and certificate of approval to the building official as necessary and other persons interested or affected by the proposal at the discretion of the commission. The building official shall deny any building permit application for work proposed on a heritage preservation site which has not been first considered by the commission or is inconsistent with recommendations made by the commission.
- (3) If the owner or designated representative of a heritage preservation site objects to the recommendations made by the commission, an appeal may be made to the City Council. In considering an appeal, the City Council will review all information generated relative to the proposed project and thereafter issue a decision by resolution of the City Council.

(Code 1982, § 308.000(12); Res. No. 1997-16, § 3, 6-17-97)

Sec. 2-163. Meetings.

All meetings of the commission shall be scheduled and conducted in compliance with the Minnesota Open Meeting Law and bylaws as established by the commission.

(Code 1982, § 308.000(13)2; Res. No. 1997-16, § 3, 6-17-97)

Secs. 2-164, 2-165. Reserved.

DIVISION 3. PARK, RECREATION AND OPEN SPACE COMMISSION

(Ord. 2-2005, 5/15/05; Ord. 11-2010, 12/21/10)

DIVISION 4. NATURAL RESOURCES COMMISSION

(Ord. 2-2005, 5/15/05; Ord. 11-2010, 12/21/10)

DIVISION 6. PUBLIC WORKS COMMISSION

(Ord. 12-2006, 10/17/06; Ord. 5-2008, 2/19/08)

ARTICLE V. DEPARTMENTS

DIVISION 1. GENERALLY

Sec. 2-200. Reserved.

DIVISION 2. BUILDING DEPARTMENT*

Sec. 2-201. Creation.

There is hereby established in the city the building department which shall be under the jurisdiction of the building official designated by the City Council.

(Code 1982, § 205.101)

Sec. 2-202. Powers and duties.

The building official is hereby authorized and directed to enforce all the provisions of the Minnesota State Building Code.
(Code 1982, § 205.102)

Sec. 2-203. Inspectors.

In accordance with the procedure and with the approval of the City Council, the building official may appoint such number of inspectors and other employees as shall be authorized from time to time.
(Code 1982, § 205.103)

Sec. 2-204. Conflict of interest.

Neither the building official nor any inspector shall have any financial interest in any concern engaged in a business relationship with the city nor engage in any business relationship with the city within his respective field.
(Code 1982, § 205.104)

Sec. 2-205. Reports and records.

The building official shall submit a report to the City Council not less than once a year, covering the work of the department during the preceding period. The building official shall keep a permanent, accurate account of all fees and other moneys collected and received, the names of the persons upon whose account the same were paid, the date and the amount thereof, together with the location of the building or premises to which they relate.
(Code 1982, § 205.105)

Sec. 2-206. Right of entry.

Upon presentation of proper credentials the building official or his duly authorized representative may enter at reasonable times any building, structure, or premises in the city to perform any duty imposed upon him by this Code. No person shall interfere with the building official or his duly authorized representatives in the execution of their duties.
(Code 1982, § 205.106)

Sec. 2-207. Stop orders.

Whenever any building work is being done contrary to the provisions of this Code, the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work.
(Code 1982, § 205.107)

Sec. 2-208. Occupancy violations.

Whenever any structure is being used contrary to the provisions of this Code, the building official may order such use discontinued and the structure or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within ten days after receipt of such notice or make the structure, or portion thereof, comply with the requirements of this Code; provided, however, that regarding an unsafe building, section 502 of the state building code shall apply.
(Code 1982, § 205.108)

Sec. 2-209. Liability.

The building official or any employee charged with the enforcement of this Code, acting in good faith and without malice for the city in the discharge of his duties, shall not thereby render himself liable personally and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his duties. Any suit brought against the building official or employer, because of such act or omission performed by him in the enforcement of any provisions of this Code, shall be defended by the city until final termination of the proceedings.

ADMINISTRATION

(Code 1982, § 205.109)

Sec. 2-210. Cooperation of other officials.

The building official may request, and shall receive so far as may be necessary in the discharge of his duties, the assistance and cooperation of the other officials of the city.

(Code 1982, § 205.110)

***Cross reference – Buildings and building regulations, § 12-1801 et seq.**

Chapter 3

CITY FEE SCHEDULE

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CITY FEE SCHEDULE

ARTICLE I. FEES, CHARGES AND EXPENSES

DIVISION 1. GENERALLY

Section 3-1. Schedule for Fees, Charges and Expenses.

Fees and charges, as well as expenses incurred by the City for engineering, planning, attorney and other services related to the processing of applications shall be established by this Ordinance and collected by the City Administrator for deposit in the City's accounts. Fees shall be established as follows. The Council may establish charges for public hearings, special meetings, or other such Council or Planning Commission actions as are necessary to process applications.

(Ord. 07-2010, 7/20/10)

Section 3-2. Establishment of Fees.

Fees shall be established as follows. The Council may establish charges for Staff time, use of consultants, public hearings, special meetings, or other such Council or Planning Commission actions as are necessary to process applications. The Fee Schedule shall be established and adopted from time to time by the City Council by Resolution.

Section 3-3. Fees Posted & Available.

A copy of any Resolution adopted by the City Council establishing the specific fees authorized herein shall be posted or otherwise available at City Hall during normal business hours.

(Ord. 03-2010, 3/16/10)

Section 3-4 - 3-35. Reserved.

DIVISION 2. CITY FEE SCHEDULE

Section 3-36. Administratively Issued Permits.

Fees are in addition to any building permit fees.

	<u>FEE</u>	<u>ESCROW</u>
Administrative Permit	\$150	\$600
Animal Kennel	\$60	\$200
Design Review	\$50	
Fence *	\$60	\$1,000
Grading Permit **	\$100	\$1,000
Moving/Relocating Structure	\$75	
Sign Permit	\$150	\$200
Sign Permit –Temporary / Renewal	\$25	
Tennis Court	\$60	\$1,000
Vegetative Cutting / debris removal		\$200

Section 3-37. Building Permits.

Building permits, other than those specified below, are based on project valuation. (Please refer to Attachment A: Building Permit Fee Table – attached.)

	<u>FEE</u>	<u>ESCROW</u>
Demolition Permit	\$110	\$250
Exterior Door Replacement	\$110	
Mechanical		
A/C, Water or Garage Heater,		
Gas Lines, Soft Water System	\$55	
Furnace, HVAC, Fireplace	\$110	
Plumbing		

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Commercial: 1% of the project valuation; \$75 minimum.

Residential:

One Bathroom incl. rough-ins	\$60
Each Additional Bathroom	\$10
Roof replacement	\$110
Swimming Pool - Building Permit	\$110
Admin Permit - Fence Fee and Escrow required	*
Grading Permit - Often required	**
Siding Replacement	\$110
Utility Permit	\$250
Window Replacement	\$110
Other Permit Not Specified	\$110

Section 3-38. Conditional Use Permit.

As a land use issue, Conditional Use Permit applications must be heard by the Planning Commission and will be either approved or denied by City Council.

	<u>FEE</u>	<u>ESCROW</u>
Conditional Use Permit	\$250	\$600
Conditional Use Permit –Tower Structures	\$250	\$8,000
Conditional Use Permit - Amended	\$250	\$350
Conditional Use Permit - Renewal	\$250	\$350
Conditional Use Permit/Renewal/Amendment		
To increase Impervious Surface over		
35% in Industrial District	\$250	\$1,000

Section 3-39. Licenses, Fees & Other Permits.

	<u>FEE</u>	<u>ESCROW</u>
A. Annual Licenses:		
Adult Entertainment License	\$10,000 per year	
Adult Entertainment Investigation	\$1,500	
Aircraft (Unpowered/Powered Vehicles)	\$100	
Charitable Gambling	10% of net gambling profits payable monthly	
Commercial Fertilizer License (Lawns) ¹	\$200	\$1,000 ¹
Commercial Fertilizer Permit	\$100	
Golf Cart		
Individual	\$25	
Business		
Includes first two carts	\$50	
Additional carts/each	\$10	
Pawnbroker / secondhand dealer license	\$100 per year	
Pawnbroker Investigation: Actual cost	\$3,000 maximum	
Peddler / Solicitor License	\$50	
Liquor Licenses		
On Sale	\$1,400	
Off Sale	\$150	
Sunday	\$200	
2 A.M. Closing	\$100	
On Sale Wine Only	\$750	

¹ Also requires \$1,000 Corporate Bond

CITY FEE SCHEDULE

Other - Temporary

As determined by City Council

Solid Waste Hauler	\$100
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B. Bi-Annual Licenses:

Dog or Cat (Altered or with chip implant)	\$5
Dog or Cat (Non-Altered)	\$10

Section 3-40. Miscellaneous Fees.

	<u>FEE</u>
Animal - Impounded / Claimed	
Charges due from Owner:	
Daily boarding fee	\$20
Veterinary services	Actual Cost
Administration fee	\$8
Impound Fee	\$95
Comprehensive Plan	\$50
City Consultant Fees: As billed to the city for phone calls, site visits, plan reviews, etc.	
Copies - per 8-1/2 x 11 page \$0.25	
Per 11x17 page	\$1
CD/DVD copy of meeting	\$10
Dockage Charge, City Dock	
Non-resident (per 4 hour increment)	\$5
City Resident (per 4 hour increment)	\$3
Overnight	\$20
Election Filing Fee	\$2
Ordinance Book	\$100
Returned Check	\$35
Zoning Code	\$50

Section 3-41. Park Fees.

	<u>FEE</u>		<u>Non-Resident</u>	
	<u>Resident</u>		<u>Fee</u>	<u>Deposit</u>
	Fee	Deposit		
Fourth of July:				
Booth Permit		\$50		
Street Vendor		\$15		
Park Reservation Fees:				
Whole Park*	\$100	\$200	\$200	\$200
Picnic Shelter	\$25	\$100	\$100	\$100
Gazebo	\$25	\$100	\$100	\$100

*Does not include playground / play structure

Section 3-42. Zoning Fees.

	<u>FEE</u>	<u>ESCROW</u> ²
Appeals	\$100	\$250
Comprehensive Plan Amendment	\$350	\$1,500
Ordinance Amendment	\$350	\$1,500
Driveway Permit (Zoning/Engineering) ³	\$250	\$1,500
Farm Site Plan	\$50	
Grading Permit	\$100	\$1,000
Landscape Performance Bond- Industrial ²	125% of the estimated cost to furnish and plant required vegetation, as approved by the City.	
Subdivision		
Simple Subdivision	\$250	\$600
Minor Subdivision	\$250	\$1,500

² Additional escrow may be required for more complex applications

³ Deposit held until Final Certificate of Occupancy issued.

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Major Subdivision: Sketch Plan & Preliminary Plat (required for more than 3 lots and PAUDs)

0 - 5 Acres	\$500 + \$100 per lot	\$2,500
> 5 - 40 Acres	\$1,000 + \$100 per lot	\$5,000
> 40 - 80 Acres	\$2,000 + \$100 per lot	\$7,500
> 80 Acres	\$5,000 + \$100 per lot	\$10,000
Final Plat	\$250	\$1000

Park Dedication Fee:

Residential 7.5% of the predevelopment value of the property being subdivided, subject to a minimum fee of \$5,000 per dwelling unit and a maximum fee of \$10,000 per dwelling unit, or that portion of land which could be purchased with the amount of park dedication fee payment owed by the subject subdivision on a per dwelling unit basis.

Commercial	\$1,500 ⁴
Industrial	\$1,500 ⁵
Previously Created Lots	\$500 ²

Rezoning

Comprehensive Plan	\$350	\$1,500
Ag Preserve Certification	\$50	
From Ag Preserve to Agricultural	\$150	

Variance	\$250	\$600
Variance Extension	\$250	\$350

Street Permit:

Street Opening	\$150 + ⁵	Waived if Franchise
Street Vacation	\$250	\$500

Section 3-43. After-The-Fact Fees.

In any case in which a property owner/contractor/developer/applicant has moved forward with a project involving grading, filling, construction, etc., prior to obtaining the required permit, CUP, variance, or other regulatory approval, the fees associated with the project will be tripled.
(Ord. 06-2010, 6/15/10)

Section 3-44. Attachment A. Building Permit Fee Table.

BUILDING PERMIT FEE TABLE 2010				Adopted 2/19/13
Value	MN Surcharge	Plan Review/ Inspections	City Fee	Permit Total
\$1,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$2,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$3,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$4,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$5,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$6,000.00	\$5.00	\$75.00	\$30.00	\$110.00
\$7,000.00	\$5.00	\$75.00	\$40.50	\$120.50
\$8,000.00	\$5.00	\$75.00	\$57.00	\$137.00
\$9,000.00	\$5.00	\$75.00	\$73.50	\$153.50
\$10,000.00	\$5.00	\$75.00	\$90.00	\$170.00
\$11,000.00	\$5.50	\$75.00	\$106.50	\$187.00
\$12,000.00	\$6.00	\$75.00	\$123.00	\$204.00
\$13,000.00	\$6.50	\$78.00	\$136.50	\$221.00
\$14,000.00	\$7.00	\$84.00	\$147.00	\$238.00
\$15,000.00	\$7.50	\$90.00	\$157.50	\$255.00

⁴ Per acre for all land which comprises the Subdivision

⁵ \$150.00 plus \$40.00 per 100 feet

CITY FEE SCHEDULE

\$16,000.00	\$8.00	\$96.00	\$168.00	\$272.00
\$17,000.00	\$8.50	\$102.00	\$178.50	\$289.00
\$18,000.00	\$9.00	\$108.00	\$189.00	\$306.00
\$19,000.00	\$9.50	\$114.00	\$199.50	\$323.00
\$20,000.00	\$10.00	\$120.00	\$210.00	\$340.00
\$25,000.00	\$12.50	\$150.00	\$262.50	\$425.00
\$50,000.00	\$25.00	\$300.00	\$525.00	\$850.00
\$100,000.00	\$50.00	\$600.00	\$1,050.00	\$1,700.00
\$150,000.00	\$75.00	\$900.00	\$1,575.00	\$2,550.00
\$200,000.00	\$100.00	\$1,200.00	\$2,100.00	\$3,400.00
\$250,000.00	\$125.00	\$1,500.00	\$2,625.00	\$4,250.00
\$300,000.00	\$150.00	\$1,800.00	\$3,150.00	\$5,100.00
\$350,000.00	\$175.00	\$2,100.00	\$3,675.00	\$5,950.00
\$400,000.00	\$200.00	\$2,400.00	\$4,200.00	\$6,800.00
\$401,000.00	\$200.50	\$2,406.00	\$4,210.50	\$6,817.00
\$450,000.00	\$225.00	\$2,700.00	\$4,725.00	\$7,650.00
\$500,000.00	\$250.00	\$3,000.00	\$5,250.00	\$8,500.00
\$550,000.00	\$275.00	\$3,300.00	\$5,775.00	\$9,350.00
\$600,000.00	\$300.00	\$3,600.00	\$6,300.00	\$10,200.00
\$650,000.00	\$325.00	\$3,900.00	\$6,825.00	\$11,050.00
\$700,000.00	\$350.00	\$4,200.00	\$7,350.00	\$11,900.00
\$750,000.00	\$375.00	\$4,500.00	\$7,875.00	\$12,750.00
\$800,000.00	\$400.00	\$4,800.00	\$8,400.00	\$13,600.00
\$850,000.00	\$425.00	\$5,100.00	\$8,925.00	\$14,450.00
\$900,000.00	\$450.00	\$5,400.00	\$9,450.00	\$15,300.00
\$950,000.00	\$475.00	\$5,700.00	\$9,975.00	\$16,150.00
\$1,000,000.00	\$500.00	\$6,000.00	\$10,500.00	\$17,000.00

PROJECTS VALUED OVER \$1,000,000

Single Family Homes:

\$5000.00 for the first 1 million, and \$3.00 for each additional \$1000 or any fraction thereof.

Examples:

\$1,001,000.00	\$500.50	\$5,003.00	\$10,510.50	\$16,014.00
\$1,500,000.00	\$750.00	\$6,500.00	\$15,750.00	\$23,000.00
\$2,000,000.00	\$1,000.00	\$8,000.00	\$21,000.00	\$30,000.00

Multifamily, Commercial, or Industrial Property:

The Inspection Fee for Projects in excess of \$1 million will be 1% of the Project Value.

Section 3-45 – 3-65. Reserved.

(Ord. 07-2010, 7/20/10; Ord. 04-2013, 2/19/13; Ord. 01-2016, 1/19/16)

Chapter 4

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ARTICLE I. IN GENERAL

Secs. 4-1 – 4.30. Reserved.

Section 4.31. Adoption of State Law by Reference.

The provisions of M. S. Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the City Council that all future amendments to M. S. Chapter 340A are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance is adopted.

Section 4.32. City May Be More Restrictive Than State Law.

The City Council is authorized by the provisions of M. S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M. S. Chapter 340A, as it may be amended from time to time.

Section 4.33. Definitions.

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

Liquor, as used in this ordinance, without modification by the words "intoxicating" or "3.2 percent malt", includes both intoxicating liquor and 3.2 percent malt liquor.

Restaurant means 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 full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this term in this ordinance, an establishment shall have a license from the state as required by M. S. § 157.16, as it may be amended from time to time, and meet the definition of either a "small establishment", "medium establishment" or "large establishment" as defined in M. S. § 157.16, subd. 3d, as it may be amended from time to time. 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 unless it meets the definitions of "small establishment", "medium establishment" or "large establishment".

Section 4.34. 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 ordinance. 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 City 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 City Council also finds that the prohibition of nudity on the premises of any establishment licensed under this ordinance, 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 the imposition of a civil penalty under the provisions of Section 4-59(B) of this ordinance.

Section 4-35. 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 ordinance, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted without obtaining a temporary license from the City.

ARTICLE II. LICENSING

Section 4-36. Number of Licenses Which May Be Issued.

State law establishes the number of liquor licenses that a city may issue. The maximum number of on-sale liquor licenses that may be issued is five (5), for statutory cities of 2,500 to 5,000 population, under the provisions of M.S. § 340A.413, subd. 1, as it may be amended from time to time. On-sale liquor licenses may be issued up to the number of licenses authorized by Minnesota Statutes Chapter 340A, as it may be amended from time to time. The City Council is not required to issue the full number of licenses that it has available.

(Ord 02-2016, 2-16-2016)

Section 4-37. 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 December 31 of each year unless another date is provided by ordinance. 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.

Section 4-38. Kinds of Liquor Licenses.

The City Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in Section 36 of this ordinance.

- A. 3.2 percent malt liquor on-sale licenses, which may be issued only to 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.
- C. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious or nonprofit organization.
- D. Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the City Council under Section 4-39 shall not exceed \$100 or a greater amount which may be permitted by M. S. § 340A.408, subd. 3, as it may be amended from time to time.
- E. On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M. S. § 340A.101, as it may be amended from time to time, and this ordinance: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of

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Public Safety. The fee for club licenses established by the City Council under Section 4-39 of this ordinance shall not exceed the amounts provided for in M. S. § 340A.408, subd. 2(b), as it may be amended from time to time. The City 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 M. S. § 340A.404, subd. 4b, as it may be amended from time to time. The City 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 340A.404, subd. 4a, 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.

1. Food sales. No on-sale intoxicating liquor license shall be issued to an establishment unless at least 50 percent of the gross food and beverage receipts of the establishment are annually attributable to the sale of food. This requirement shall be regulated as follows:
 - a. Each on-sale intoxicating licensee shall have the continuing obligation to have at least 50 percent of gross food and beverage receipts from the establishment during the preceding business year attributable to the sale of food.
 - b. In the case of a new establishment, the applicant must make a bonafide estimation that at least 50 percent of the gross receipts from the sale of food and beverages of the establishment during its first year of business will be attributable to the sale of food.
 - c. Financial records for the food and beverage portion must be maintained separately from the records of the remainder of the establishment.
 - d. For the purpose of this section, "sale of food" shall include gross receipts attributable to the sale of food items, soft-drinks and nonalcoholic beverages. It shall not include any portion of gross receipts attributable to the nonalcoholic components of plain or mixed alcoholic beverages, such as ice, soft-drink mixes or other mixes.
 - e. The city may require the production of such documents or information, including but not limited to books, records, audited financial statements or pro forma financial statements, sales reports and analysis as it deems necessary or convenient to enforce these provisions. The city may also obtain its own audit or review of such documents or information, and all licensees shall cooperate with such a review, including prompt production of requested records.
 - f. Establishments found to fall below the 50 percent standard of annual food sales from the preceding business year shall be required to meet with the city clerk, prior to license renewal, and reassess their business operations and prepare and implement a plan of operations reasonably directed to achieve the 50 percent food sales requirement in the subsequent year. The plan will be subject to the approval of the city administrator. Public safety compliance confirmation will be reviewed by the city clerk and the director of public safety.
 - g. Establishments found to have less than 40 percent of annual gross food receipts may be placed on probation status. The probationary status review will be conducted by the city council and the council may require the establishment be placed on probationary status for one year and require the licensee to prepare any plans and reports, participate in any required meetings and take other action that the city may require to increase the sale of food. The licensee shall submit the plans and periodic reports to the city clerk.
 - h. If, after the initial probationary period, food sales are still less than 40 percent and the establishment is not in compliance with applicable statute, regulation or ordinance relating to alcoholic beverage, the city council may:
 - (1) Extend the probation period up to 12 additional months;

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- (2) Limit alcohol service hours by revoking an establishment's 2:00 a.m. liquor license (if applicable);
 - (3) Reduce the hours of service by one hour for the period of one year; or
 - (4) Deem the establishment ineligible to sell intoxicating beverages.
- i. Denial of an intoxicating liquor license shall not prohibit the license holder from applying to obtain a license to sell 3.2 percent malt beverages.
 - j. Food must be available to guests up until two hours before discontinuing alcohol service.

(Ord 02-2016, 2/16/2016)

- F. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M. S. § 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 4-33 of this ordinance, 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 City Council under the provisions of Section 9 of this ordinance, shall not exceed \$200, or the maximum amount provided by M. S. § 340A.504, subd 3(c) as it may be amended from time to time.
- G. Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.
- H. 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 shall be for 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.
- I. 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 M. S. 340A.404, subd 5, as it may be amended from time to time, and which meet the definition of restaurant in Section 3 of this ordinance; and to licensed bed and breakfast facilities which meet the criteria in M. S. § 340A.401, subd 1 as it may be amended from time to time. The fee for an on-sale wine license established by the City Council under the provisions of Section 4-39 of this ordinance 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 with a content over 3.2 percent (strong beer) without an additional license.
- J. 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.
- K. Approval of the issuance of a consumption and display by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the City Council on a person who has been issued a consumption and display permit under the provisions of Section 4-39 of this ordinance shall not exceed \$300, or the maximum amount permitted by M. S. §340A.14, subd 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

Section 4-39. License Fees; Pro Rata.

- A. No license or other fee established by the city shall exceed any limit established by M. S. § 340A, as it may be amended from time to time, for a liquor license.

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- B. The City Council may establish from time to time by ordinance or resolution 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 ordinance. 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 on a quarterly basis.
- D. All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.
- E. A refund of a pro rata share of an annual license fee may occur only if authorized by M. S. § 340A.408, subd. 5.

Section 4-40. City Council Discretion to Grant or Deny a License.

The City 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 ordinance.

Section 4-41. Application For License.

- A. *Form.* Every application for a license issued under this ordinance 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 City 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 place, and other information as the City 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 section. 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 ordinance, the applicant shall demonstrate proof of financial responsibility as defined in M. S. § 340A.409, as it may be amended from time to time, with regard to liability under M. S. § 340A.801, 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 M. S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this ordinance without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

Section 4-42. 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 or public areas.

Section 4-43. Applications for Renewal.

- A. At least 90 days before a license issued under this ordinance 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 City Council. No licensee has a right to have the license renewed.
- B. The City Council shall not renew a license unless the holder of the license has made sales under the license for ninety consecutive business days (exclusive of business days the establishment is regularly closed) during the one year period immediately prior to the date of renewal. The City Council shall consider such licenses to be inactive.

Section 4-44. Transfer of License.

No license issued under this ordinance may be transferred without the approval of the City 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 City 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.

Section 4-45. Investigation.

- A. *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the City 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 the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.
- B. *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the City Council, a comprehensive background and financial investigation, the City 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 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. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on sale intoxicating liquor license or an on sale wine license.

Section 4-46. Hearing and Issuance.

The City 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 City Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

Section 4-47. Restrictions on Issuance.

- A. Each license shall be issued only to the applicant for the premises described in the application.
- B. Not more than one license may be directed or indirectly issued within the city to any one person.
- C. 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.
- D. No license shall be issued for any place or any business ineligible for a license under state law.
- E. No license may be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this paragraph shall not apply to any existing license existing on the effective date of this chapter or to the renewal of an existing license.

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- F. No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

Section 4-48. 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. Within 90 days after employment, every person selling or serving liquor in an establishment which has an "on-sale" license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the City Council. Proof of training shall be provided by the licensee.
- B. 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 ordinance and the law equally with the employee.
- C. Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the City 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.
- D. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- E. Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license.

Section 4-49. Hours and Days of Sale.

- A. The hours of operation and days of sale shall be those set by M. S. § 340A. 504, as it may be amended from time to time.
- B. 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.
- C. 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.
- D. 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.
- E. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

Section 4-50. Minors on Premises.

- A. No person under the age of 18 years may be able to sell or serve intoxicating liquors or 3.2 percent malt liquor.
- B. No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

Section 4-51. Restrictions on Purchase 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 M. S. § 3401.414, as it may be amended from time to time, which has been approved by the City Council, and no person shall consume liquor in any such place.

Section 4-52. Suspension and Revocation.

- A. The City 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 ordinance relating to liquor, as provided in (B). Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M. S. §§ 14.57 to 14.70, as it may be amended from time to time. The City 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 City Council for violations of the provisions of this chapter or M. S. Chapter 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. Revocations shall occur within 60 days following a violation for which the revocation is imposed.
- C. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 112.04, the license shall be revoked.
- D. The license shall be suspended by the City Council after a finding under (A) 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:
- E. 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.
- F. 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.
- G. 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.
- H. For a fourth violation within any three year period, the license shall be revoked.
- I. The City Council shall select the day or days during which the license will be suspended.
- J. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this ordinance or state law without further action of the City 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 City Administrator, a hearing before the City Council shall be granted within ten days. Any suspension under this paragraph shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.
- K. The provisions of Section 4-59 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

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Sections 4-53--4-58. Reserved.

ARTICLE III. PENALTIES

Section 4-59. Penalties.

- A. Any person violating the provisions of this chapter or M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- B. The City Council shall impose a civil penalty of up to \$2,000 for each violation of M. S. Chapter 340A and of this ordinance as provided by the minimum schedule of presumptive civil penalties. These civil penalties shall be in addition to any criminal penalties imposed under (A) or any suspension or revocation imposed under Section 52. Conviction of a violation in a court of law is not required in order for the City Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M. S. § § 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the City 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 in addition to any suspensions which must be imposed unless the license is revoked:
 - C. For the first violation within any three year period, \$500.
 - D. For the second violation within any three year period, \$1,000.
 - E. For the third and subsequent violations within any three year period, \$2,000 for each violation.
- F. The term "violation" as used in this section and in Section 22 includes any and all violations of the provisions of this chapter, or of M. S. Chapter 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.

(Ord. 16-2005, 11/15/05)

Chapter 5

RESERVED

Chapter 6

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***Cross references** – Livestock, § 12-188; agricultural operations, § 12-189; protection of animals from snowmobiles and all terrain vehicles, § 22-146.

State law references – Animals generally, M.S.A. Ch. 346; authority of council to regulate animals, M.S.A. § 412.221, subd. 21.

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ARTICLE I. IN GENERAL

Sec. 6-1. 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:

Altered means an animal which has been surgically rendered unable to reproduce: Neutered in the case of male animals, or spayed in the case of female animals.

Animal, Domestic Pets means any animal commonly accepted as a domesticated household pet. Unless otherwise defined, such animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, fish, and other similar animals.

Animal, Wild means any animal commonly considered to be naturally wild and not naturally trained or domesticated, or which is commonly considered to be inherently dangerous to the health, safety, or welfare of people.

Animal Control Officer means an officer employed by or under contract who is responsible for animal control operations, enforcement of this ordinance and other laws dealing with animals. The Animal Control Officer shall also be construed to include any licensed law enforcement officer.

(Ord 1997-2, 12-16-97)

At large means a dog when it is off the property of his owner or keeper and not under restraint.

Cat means both male and female of any animal of the domesticated cat species.

Clerk means the city clerk and the duties imposed upon the clerk hereunder with respect to registration receipts and tags may be carried out by the clerk through the clerk's duly designated agents subject to the clerk's supervision, direction and control.

Commercial kennel means a place where four or more dogs over six months of age are kept, and where the business of selling, boarding, breeding, training or grooming dogs is conducted, governed by a special use permit.

Dog means both male and female of any animal of the domesticated dog species.

Owner means any person owning, keeping, harboring, or acting as custodian of any animal.

Rescue Group shall mean an organization certified as a nonprofit 501(C)(3) organization and has as at least one of its purposes the rescue and placement of cats.

Residential kennel means a place where four or more dogs over six months of age are kept on premises which are zoned and occupied for residential purposes, and where the keeping of such dogs is incidental to the occupancy of the premises for residential purposes, by a special use permit and licensed as required herein.

Restraint means an animal is on the premises of the animals owner; obedient to that person's command when off the premises; within a private motor vehicle or controlled by a leash. An animal on the property of another without the consent of such property owner is at large and not under restraint.
(Code 1982, § 1001.101)

Stray Cat Colony shall mean cats living in a stray cat managed program.

Stray Cat Management Program shall mean a program designed to trap, sterilize (spay or neuter), and return unsocialized stray cats to their colony in order to reduce and ultimately eliminate stray cat populations in a non-lethal and effective manner.

Unsocialized Stray Cat shall mean a stray cat which is wild, untamed or unsocialized.

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Cross reference(s)--Definitions generally, § 1-2.

Sec. 6-2. Restraint.

No owner shall permit his animal to be at large in this City, but shall keep such animal under restraint at all times. animals shall be prohibited in areas of public parks or upon public lands unless leashed at all times.

(Code 1982, § 1001.111)

State law reference(s)--Animals at large, M.S.A. § 346.16 et seq.

Sec. 6-3. Confinement.

(a) The owner shall confine within a building or secure enclosure any fierce, dangerous, or vicious animal, except when under restraint by a competent person.

(b) Every female dog in heat shall be confined in a building, secure enclosure, veterinary hospital, or boarding kennel, or shall be controlled on a leash while being exercised.

(Code 1982, § 1001.112)

Sec. 6-4. Public nuisance--Determination.

Any animal is a public nuisance that has done any of the following:

- (1) Has destroyed property or habitually trespassed in a damaging manner on property of persons other than the owner.
- (2) Has attacked or bitten a person outside the owner's or custodian's premises.
- (3) Has shown vicious habits or molested pedestrians or persons riding or driving on the public streets or highways.
- (4) Has habitually ran at large.
- (5) Has habitually barked, howled, or bayed to the annoyance of others.
- (6) Has not been registered with the Clerk in order to be identified and returned to its owner.

(Code 1982, § 1001.113)

Cross reference(s)--Nuisances generally, § 10-26 et seq.

State law reference(s)--Dogs as nuisances, M.S.A. § 347.04.

Sec. 6-5. Same--Abatement.

After a finding by a court of proper jurisdiction that an animal is a public nuisance, as defined in section 6-4, the court may order that the animal be destroyed or that the owner or custodian remove it from the City or keep it confined to a designated place.

(Code 1982, § 1001.114)

Cross reference(s)--Abatement of nuisances generally, § 10-28.

Sec. 6-6. Animal shelter and animal control.

(a) The City Council may provide for an animal shelter, either within or outside the limits of the City, and may provide for animal control officers and animal shelter workers.

(Code 1982, § 1001.115)

(b) Duties of the Animal Control Officer. The Animal Control Officer shall have the police powers necessary for enforcement of this ordinance, including the authority to issue citations for violations.

(Ord 1997-2, 12-16-97)

Sec. 6-7. Abandonment.

No person shall abandon any living animal or animal carcass within the City.

(Code 1982, § 1001.120)

State law reference(s)--Animal abuse, M.S.A. § 346.35 et seq.

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Sec. 6-8. Penalty.

Any person, firm, or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor.

(Ord 1997-2, 12-16-97)

Secs. 6-9 -- 6-35. Reserved.

ARTICLE II. ANIMAL REGISTRATION PROVISION

Sec. 6-36. Requirements.

No person in the City shall own, harbor, keep or have custody of a dog or cat over six months of age within this city unless such dog or cat has been vaccinated for rabies and registered with the Clerk. All dogs shall be provided a license and such license period shall be for two years beginning January 1 of every other year. All other domestic pets can be registered with the Clerk for easy identification if the animal is at large within the City.

(Code 1982, § 1001.102; Res. No. 1996-9, 3-19-96)

Sec. 6-37. Application and Tags.

Application for City registration shall be made to the Clerk 45 days after taking residence within this city. In the case of the dog license it shall not be later than 30 days after commencement of the license period. The application shall include such descriptive information as is necessary to provide reasonable identification of the animal and its owner. All applicants for registration of dogs and cats shall present to the Clerk a certificate issued by a doctor of veterinary medicine showing that the animal in question has been vaccinated against rabies. All applicants for registration for an altered animal shall present to the clerk a certificate issued by a doctor of veterinary medicine showing that the animal has been altered.

Upon the registration of a dog, the Clerk shall issue a dog license. The licensee shall be provided with a license receipt and a metallic tag bearing the license number, the name of this city, and the year when the license period begins or has begun. Except where the dog for which the license is issued is on the premises of his owner, the animal shall have a collar or harness on which the license tag is affixed. No person shall counterfeit any such tag of this city or use a counterfeit tag.

(Code 1982, § 1001.104)

(Code 1982, § 1001.103)

State law reference(s)--Wearing invalid tag unlawful, M.S.A. § 347.18.

Sec. 6-38. Term of Validity.

City registration shall be valid for the period the certificate of rabies vaccination certifies, and shall expire on the date the rabies vaccination certificate expires. Dog licenses are valid for two calendar years.

Sec. 6-39. Lost or stolen tags.

If any tag provided for by this article is lost or stolen, the owner may obtain a new tag by surrendering the receipt for the first tag and by paying the sum set by the City Council from time to time.

(Code 1982, § 1001.105)

Sec. 6-40. Transfers and refunds.

Animal registration and dog tags shall not be transferable and no refunds shall be made on any fee because of leaving the city or death of the animal before the expiration of the registration period.

(Code 1982, § 1001.106)

***State law references**—Unlicensed dogs unlawful, M.S.A. § 347.14; failure to obtain license, M.S.A. §347.19.

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Sec. 6-41. Fee.

The license fee for each domestic pet registration shall be in the amount set by the city council from time to time. If the registration is obtained while the animal is impounded by this city or after the required license period has commenced, there shall be added to the regular registration fee a late fee penalty of an additional sum as set by the City Council from time to time for each animal. Any domestic pet that is impounded by this city must be registered by the Clerk prior to redeeming the domestic pet from the animal shelter.
(Code 1982, § 1001.107)

Secs. 6-42--6-65. Reserved.

ARTICLE III. IMPOUNDMENT*

Sec. 6-66. Authorized.

The animal control officer or police officer of the city shall impound any animal determined to be a public nuisance. To enforce these provisions, the animal control officer or police officer may enter upon private premises where they have reasonable cause to believe there is a violation. Any domestic pet owner shall produce for inspection the registration receipt upon request of such officers. When domestic pets or other animals are found running at large and their ownership is known to the animal control officer or police officer, such domestic pet need not be impounded, but such officer may, at their discretion, cite the owners of such domestic pet to pay a animal control call out fee as set by the Council from time to time.
(Code 1982, § 1001.116)

Sec. 6-67. Treatment during impoundment.

Any domestic pet which is impounded in the animal shelter 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 animal shelter 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 animal shelter for at least 14 days.
(Code 1982, § 1001.117)

Sec. 6-68. Redemption.

Any domestic pet impounded under this article may be redeemed from the animal shelter by the owner upon paying the following fees and charges:

- (1) The registration fee for the domestic pet, if the registration has not previously been obtained. This fee is to be paid to the Clerk at city hall or to the animal shelter if the city hall is closed.
- (2) The late registration fine, in the amount set by the City Council from time to time, where the registration has not been obtained within the required time. This fee is to be paid to the Clerk at city hall or to the animal shelter if the city hall is closed.
- (3) The boarding fee in the amount set by the City Council and animal shelter from time to time. This fee is to be paid to the animal shelter for their services.
- (4) An impounding fine in the amount established by the city council from time to time. This fee is to be paid at the animal shelter by a separate check to the city.
- (5) An additional fee in the amount set by the City Council for second, third or fourth violations of this chapter. This fee is to be paid at the animal shelter by a separate check to the city.

(Code 1982, § 1001.118)

***State law references**—Authority to impound animals, M.S.A. § 412.221, subd. 21.

Sec. 6-69. Disposal of unredeemed animals.

The animal shelter shall notify the owner of any domestic pet which has been impounded and which has identification on it. At the end of the impounding period if the animal is not reclaimed by the owner, such animal shall be deemed to have been abandoned and may be sold to any person or disposed of by the animal shelter in a

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humane manner. No abandonment or disposal of any animal shall exempt the owner of such animal from the penalties and redemption fees provided under this chapter.
(Code 1982, § 1001.119)

Sec. 6-70. Observation of dog after biting.

Any person knowing of a case of a human being bitten by a dog shall immediately notify the animal control officer or police, who shall then order such dog impounded for a period of 14 days, at the expense of the dog owner, before surrendering the dog to its owner. If the owner has adequate facilities, the animal control officer or police may allow the owner of the dog to impound it in such facilities.
(Code 1982, § 1001.121)

State law reference(s)--Rabies control program, M.S.A. § 346.50 et seq.

Sec. 6-71. Animal control and animal shelter reports.

The animal control officer and the animal shelter shall give an accurate written report for each month to the city clerk showing all services provided and fees collected for all animals impounded or otherwise disposed of under the terms of this chapter and the duration of impoundment.

(Code 1982, § 1001.122)

(Code 1982, § 1001.123)

Secs. 6-72--6-100. Reserved.

ARTICLE IV. KENNELS*

Sec. 6-101. Fees.

The fee for a commercial kennel license shall be the amount set by the City Council from time to time. The fee for a residential kennel license shall be the amount set by the City Council from time to time. The kennel license shall be in lieu of individual license fees as set forth in Section 6-41. A certificate of vaccination against rabies shall be available for inspection by any person charged with enforcement of this chapter, for each dog over six months of age housed in the kennel.

(Code 1982, § 1001.108)

Sec. 6-102. Tags.

Upon the issuance of a conditional use permit license by the City Council, the licensee shall be provided with metallic tags as described in section 6-38 for each dog housed in the kennel. The provisions of Section 6-38, section 6-39 and Section 12-221 shall apply to kennel dogs.

(Code 1982, § 1001.109)

Sec. 6-103. Regulations.

Kennels shall be kept in a clean and healthful condition at all times, and shall be open to inspection by any health officer, animal control officer, or other person charged with enforcement of this chapter, or any health or sanitary regulation of this city, at all reasonable times.

(Code 1982, § 1001.110)

Secs. 6-104--6-130. Reserved.

ARTICLE V. WILD ANIMALS*

Sec. 6-131. Purpose.

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To protect the health, safety and welfare of the citizens of the city, it shall be unlawful to keep any wild animal within the corporate limits of the city, except as permitted pursuant to the provisions of this article.
(Code 1982, § 1002.101)

***Cross references**—Businesses, ch.8; private kennels, § 12-221.

State law reference—Kennel licenses, M.S.A. § 347.32.

†State law reference—Game and fish, M.S.A. Ch. 97A.

Sec. 6-132. 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:

Wild animal means and includes any mammal, amphibian, or reptile which is of a species which is wild by nature or of a species which, due to size, vicious nature or other characteristic is dangerous to human beings. Examples include but are not limited to:

- (1) Any large cat of the family Felidae, such as lions, tigers, jaguars, leopards, cougars and ocelots, except commonly accepted domesticated house cats.
- (2) Any member of the family Canidae, such as wolves, coyotes, dingos, and jackals, except domesticated dogs.
- (3) Any crossbreed such as crossbreeds between dogs and coyotes, or dogs and wolves, but does not include crossbred domesticated animals.
- (4) Any poisonous snake such as a rattlesnake, coral snake, water moccasin, puff adder or cobra.
- (5) Any snake or reptile which by its size, vicious nature or other characteristic is dangerous to human beings.
- (6) Any skunk, raccoon, fox or ferret, unless certified by a veterinarian to be free of rabies, and kept pursuant to a valid DNR permit, such certification to be obtained within seven days of receipt of the animal.
- (7) Any bear, ape, gorilla, monkey (except as exempted by this article), or badger.
- (8) Any other animal or reptile which is commonly considered wild and not domesticated.

(Code 1982, § 1002.102)

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--"Wild animal" defined, M.S.A. § 97A.015(55).

Sec. 6-133. Exceptions, permit required.

(a) Any person desiring to keep an animal prohibited by this article may apply for a temporary conditional use permit from the city council. Such permit may be issued for a period not to exceed 30 days and shall specify conditions under which such animals shall be kept. Provided, however, that no such permit shall be issued unless such prohibited animal is brought into the city for entertainment, exhibition, or show purposes only, or by persons keeping animals for a public zoo as volunteers, docents or otherwise. (A public zoo or other institution engaged in a permanent display of animals, any bona fide research institution or veterinary hospital may be issued a permanent special use permit provided applicable zoning requirements are met.)

(b) Nonpoisonous snakes or snakes not prohibited by this article, birds kept indoors, hamsters, mice, rabbits, gerbils, white rats, guinea pigs, chinchillas, or lizards, and similar small animals capable of being kept in cages continuously are also exempt and do not require a permit.

(c) Handicapped persons may keep monkeys trained as personal helpers by special use permit subject to annual review.

(d) The raising of wild animals for pelts may be permitted by special use permit provided all applicable zoning requirements and all applicable state requirements are met.

(e) Before issuance of any temporary or permanent conditional or special use permit, the applicant shall provide the city with proof of insurance, including public liability insurance with limits of not less than \$100,000.00. The insurance shall provide coverage for liability resulting from the ownership or possession of the specific animal or animals being permitted.

(Code 1982, § 1002.103)

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Sec. 6-134. Impoundment of wild animals.

(a) Any wild animal kept in violation of this article may be impounded by the city. Unless such impounded animal is reclaimed and removed from the city, or issued a permit to allow it to remain in the city, or unless the owner petitions the district court for a determination that the animal is exempt from the provisions of this article, the animal may be destroyed or sold five days following notice to the owner of such animal of its impoundment and the provisions of this article.

(b) Any person reclaiming any such animal shall pay the costs of impounding and boarding the same at the time of its release.

(Code 1982, § 1002.104)

(Ord. 01-2011, 2/15/11)

Chapter 8

BUSINESSES*

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***Cross references** – Kennels, § 6-101 et seq.; bed and breakfast facilities, § 12-222; hotels, § 12-223; marinas, § 12-224; coin operated machines, § 12-225; collection of solid waste, § 18-31 et seq.

ARTICLE I. IN GENERAL

Secs. 8-1 -- 8-30. Reserved.

ARTICLE II. CIGARETTES*

Secs. 8-31 - 8-35. Reserved.

(Repealed Ord 1997-23, 6/15/99)

***State law reference**—Authority to license and regulate the sale of cigarettes, M.S.A. § 461.12 et seq.

Secs. 8-36 -- 8-55. Reserved.

ARTICLE III. PEDDLERS, SOLICITORS AND HAWKERS*

DIVISION 1. GENERALLY

Sec. 8-56. 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:

Hawker means any person selling any edible goods or products from a vehicle, pack, going about from place to place, carrying such goods or products for the purpose of sale and delivery.

Peddler means any person with no fixed place of business who is selling any non-edible goods or products from a vehicle or pack, going about from place to place, carrying such goods or products for the purpose of sale and delivery.

Solicitor means any person who goes from house to house soliciting or taking or attempting to take orders for:

(1) The purchase of any goods, wares, or merchandise, including magazines, books, periodicals, or personal property of any nature whatsoever for delivery in the future; or

(2) Services to be performed then or in the future.

(Code 1982, § 803.101)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 8-57. Penalty for violation.

Any person who violates any provisions of this article is guilty of a misdemeanor and upon conviction shall be punished in accordance with section 1-13.

(Code 1982, § 803.109)

Sec. 8-58. Notice prohibiting peddlers.

Any resident of the city who wishes to exclude peddlers, solicitors or hawkers from their premises may place upon or near the usual entrance to such premises a printed placard or sign bearing the following notice: "Peddlers, Solicitors and Hawkers Prohibited." Such placard shall be at least 33/4 inches long and 33/4 inches wide and the printing thereon shall not be smaller than 48 point type.

(Code 1982, § 803.106)

***State law references**—Authority to regulate hawkers and peddlers, M.S.A. § 329.06; authority to regulate transient merchants, M.S.A. §§ 412.221, subd. 19, 437.02.

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Sec. 8-59. Entry onto premises restricted.

No peddler, solicitor or hawker shall enter in or upon any premises or attempt to enter in or upon any premises, where such placard or sign is placed and maintained.

(Code 1982, § 803.107)

Sec. 8-60. Removal of notice.

No person other than the person occupying the premises shall remove or deface any placard or sign posted under this article.

(Code 1982, § 803.108)

Sec. 8-61. Peddling in right-of-way.

No activity allowed under this article shall be done on the public right-of-way.

(Ord. No. 1996-36, 10-15-96)

Secs. 8-62--8-80. Reserved.

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Sec. 8-81. Required.

No person shall engage in the business of peddler, solicitor or hawker within the city without first obtaining a license from the city clerk.

(Code 1982, § 803.102)

Sec. 8-82. Exemptions.

This division shall not apply to:

- (1) Any sale under court order.
- (2) Any bona fide auction sale.
- (3) A sale at wholesale to a retail dealer.
- (4) The sale of milk or ice.
- (5) The sale of farm or garden products by the person producing same.
- (6) The sale of goods or products by minors wherein the proceeds from such sale go for the support of a nonprofit organization.

(Code 1982, § 803.105)

Sec. 8-83. Application.

Application for a license under this division shall be made to the clerk on a form supplied by him and shall show the following:

- (1) The name of the applicant and of all persons associated with him in his business.
- (2) The type of business for which the license is desired.
- (3) The length of time for which such license is desired.
- (4) A general description of the thing or things to be sold.

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(5) The present place of business of the applicant.

(6) The places of residence of the applicant for the five years just passed.

(7) Written permission from the landowner that the applicant may use private property within the city to conduct his business.

(Code 1982, § 803.103; Res. No. 1996-36, 10-15-96)

Sec. 8-84. Possession; display.

All licenses issued under this division shall be carried by the licensee and such licensee shall whenever requested show such license to any officer or citizen who demands to see the same.

(Code 1982, § 803.104)

ARTICLE IV. LAWFUL GAMBLING

DIVISION 1. GENERALLY

Section 8-85. Definitions.

Subd. 1. The terms contained in this Section shall have the meaning as scribed to them by Minnesota Statutes Section 349.11 et seq. and any successor statutes dealing with regulation of lawful charitable gambling.

Subd. 2. Net Profits. Net profits are profits less allowable expenses under the laws and regulations of the State of Minnesota relating to lawful gambling.

Section 8-86. Donation Required.

Any organization licensed to conduct lawful gambling within the City of Afton shall donate ten percent (10%) of its net profits from the conduct of lawful gambling each month to the Special Charitable Gambling Fund. Such donations shall be made within fifteen (15) days at the end of each calendar quarter. For purposes of this Section, a calendar quarter shall be deemed to end at 11:59 p.m. on the last day of March, June, September and December.

Section 8-87. Reports.

All organizations conducting lawful gambling within the City of Afton shall provide the City Administrator with copies of all reports it provides to the Charitable Gambling Board.

Section 8-88. Suspension, Revocation, and Non-renewal of Licenses.

If any organization shall fail to make payments required by this Section or fail to provide the City Administrator with reports as required by this Section, such failure shall be grounds for the City to recommend to the Charitable Gambling Board that the gambling license for such organization to be suspended, revoked or not renewed.

Section 8-89. City of Afton Charitable Gambling Fund.

Subd. 1. There is hereby created a City of Afton Charitable Gambling Fund which shall be held for safe-keeping by the City of Afton in an account separate from any City funds. Such funds shall be designated Afton Charitable Gambling Fund. No expenditures shall be made from such funds except upon resolution by the City Council and then only for "lawful purposes" as defined by Minnesota Statute Section 349.12, Subd. 25.

Subd. 2. Each organization within the City of Afton which is licensed by the State of Minnesota to conduct lawful gambling shall contribute 10% of its net profits as defined by Minnesota Statutes Section 349.12 monthly to the City of Afton Charitable Gambling Fund.

(Ord. 2005-6, 4/19/05)

Chapter 9

LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES

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State law references – Adult Entertainment Establishments, M.S.A. 617.242; authority for local regulation allowed, M.S.A. § 617.242, subd. 7.

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LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES

Sec. 9-1. Purpose.

The purpose of this Chapter is to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of Afton, to guard against the inception and transmission of disease, and to establish reasonable and uniform regulations. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

The City Council further finds that experience from other cities demonstrates that sexually oriented businesses conducted in private by members of the same or the opposite sex, and employing personnel with no specialized training, are susceptible to operation in a manner contravening, subverting or endangering the health, safety and welfare of members of the community by being the sites of acts of prostitution, illicit sex, and occasions of violent crimes, thus requiring close inspection, licensing, and regulation.

Sec. 9-2. Classification.

The following are classified as sexually oriented businesses:

- (a) Sexually oriented arcades
- (b) Sexually oriented bookstores or sexually oriented video stores
- (c) Sexually oriented cabarets
- (d) Sexually oriented conversation/rap parlors
- (e) Sexually oriented massage parlors
- (f) Sexually oriented motels
- (g) Sexually oriented motion picture theaters
- (h) Sexually oriented saunas
- (i) Sexually oriented theaters
- (j) Escort agencies
- (k) Nude model studios
- (l) Adult Entertainment Establishments

Sec. 9-3. License Required.

(a) A sexually oriented business may not be operated without a valid license, issued by the City of Afton for the particular type of business.

(b) An application for a license must be made on a form provided by the City Administrator. The application must be accompanied by 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 market dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 9.16 of this Chapter shall submit a diagram meeting the requirements of that Section.

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(c) The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with applicable laws and City Code provisions by the City's fire department and building officials.

(d) If a person who wishes to operate a sexually oriented business is an individual, the individual must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 9-4 and each applicant shall be considered a licensee if a license is granted.

Sec. 9-4. Issuance of a License.

(a) The City Administrator shall approve the issuance of a license to an applicant within 30 days after receipt of a complete application. If any of the following are true, the City Administrator may deny the license or immediately revoke an already approved license:

- (1) An applicant is under 18 years of age.
- (2) An applicant is delinquent in the applicant's payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business.
- (3) An applicant has intentionally failed to provide information reasonably necessary for issuance of the license or has intentionally falsely answered a question or request for information on the application form.
- (4) An applicant has been convicted of a violation of a provision of this Chapter within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (5) An applicant is residing with a person who has been denied a license by the City to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
- (6) The premises to be used for the sexually oriented business has not been approved by the City's fire department and building officials as being in compliance with applicable laws and City Code provisions. The City's fire department and building officials must inspect the premises and issue inspection reports within 30 days after the applicant identifies the premises and requests an inspection.
- (7) The license fee required by this Chapter has not been paid.
- (8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that the applicant is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers on two or more occasions during the preceding 12 month period.
- (9) An applicant or the proposed sexually oriented business proposed is in violation of or is not in compliance with this Chapter.
- (10) An applicant or an applicant's spouse has been convicted of a crime involving any of the following offenses:
 - A. Prostitution as described in Minnesota statutes
 - B. Solicitation, inducement of promotion of prostitution as described in Minnesota statutes
 - C. Receiving profit derived from prostitution as described in Minnesota statutes
 - D. Other prohibited acts relating to prostitution as described in Minnesota statutes
 - E. Obscenity as described in Minnesota statutes
 - F. Sale, dissemination, distribution, display or exhibition of harmful material to minors as described in Minnesota statutes
 - G. Sexual performance by a child as described in Minnesota statutes
 - H. Dissemination or possession of child pornography as described in Minnesota statutes
 - I. Indecent exposure as described in Minnesota statutes
 - J. Criminal sexual conduct as described in Minnesota statutes
 - K. Incest as described in Minnesota statutes
 - L. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which
 1. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
 2. less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

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3. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10) of this Section may qualify for a sexually oriented business license only when the time period required by Subsection (a)(10) of this Section has elapsed.

(d) The license, if granted, shall state the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

Sec. 9-5. License fees; license investigation fees.

The annual fee for a sexually oriented business license shall be set by resolution of the City Council. The investigation fee for the purpose of issuing a license shall be set by resolution of the City Council. In the event that the license is denied upon application, the license fee shall be refunded; however, no part of the license investigation fee shall be returned to the applicant. No part of the annual license fee shall be refunded if the license is suspended or revoked.

Sec. 9-6. Inspection.

(a) An applicant or licensee shall permit representatives of the City's law enforcement department, fire department and City staff and building officials to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or their agent or employee commits a violation of this Chapter if the person refuses to permit a lawful inspection of the premises by the City's law enforcement officers at any time it is occupied or open for business.

(c) The provisions of this Section do not apply to areas of a sexually oriented motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Sec. 9-7. Expiration of License.

(a) Each renewal license shall be issued for a maximum period of one (1) year. All licenses expire on December 31 of each year. Each license may be renewed only by making application as provided in Section 9-3. Application for renewal should be made at least 90 days before the expiration date. If the City Administrator determines good and sufficient cause is shown by the applicant for failure to file a timely renewal application, the City Administrator shall, if other provisions of this Chapter are complied with, grant the application.

(b) When the City Administrator 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 Administrator 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.

Sec. 9-8. Suspension.

The City Administrator may suspend a license for a period not to exceed thirty (30) days following written notice and an opportunity to be heard if the City Administrator determines that a licensee or an employee of a licensee has;

- (a) Violated or is not in compliance with this Chapter;

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- (b) Engaged in the sale, consumption or use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter;
- (d) Knowingly permitted unlawful gambling by any person on the sexually oriented business premises.
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officer.

Sec. 9-9. Revocation.

- (a) The City Administrator may revoke a license preceded by written notice and an opportunity to be heard if a cause of suspension in Section 9-8 occurs and the license has been suspended within the preceding 12 months.
- (b) The City Administrator may revoke a license if the City Administrator determines that:
 - (1) A licensee gave false or misleading information to the City during the application process;
 - (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substance on the sexually oriented business premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the sexually oriented business premises;
 - (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee has been convicted of an offense listed in Section 9-4 (a)(10) for which the time period required in Section 9-4 (a)(10) has not elapsed;
 - (6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 9-4 (a)(10), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
 - (7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the meaning as it is defined in Minnesota statutes;
 - (8) A licensee is delinquent in payment to the City for ad valorem taxes, local lodging tax, or other taxes or fees related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Section 9-9 (b)(7) does not apply to sexually oriented 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) When the City Administrator revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the City Administrator 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 has revoked under Section 9-9 (b)(7) of this Chapter, an applicant may not be granted another license until the appropriate number of years required under Section 9-4 (a)(10) have elapsed.

Sec. 9-10. Appeal.

- (a) If the City Administrator requires a business establishment that is unlicensed to apply for a license, denies the issuance of a license, or suspends, or revokes a license, the City Administrator shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, and the right to an appeal. The aggrieved party may appeal the decision of the City Administrator within 10 days of receiving notice of the City Administrator's action. The filing of an appeal stays the action of the City Administrator in requiring, suspending, or revoking a license until the City Council makes a final decision.

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(b) The City Council may appoint a committee of the City Council or an independent hearing officer to hear the matter, report findings of fact and a recommendation for disposition to the City Council. Hearings on the appeal shall be open to the public and the licensee or applicant shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the City Council shall make a final decision.

(c) The City Council may condition denial, suspension, revocation, or non-renewal of a license upon appropriate terms and conditions.

Sec. 9-11. Transfer of License.

A licensee shall not transfer a license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Sec. 9-12. General Restrictions.

(a) All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed premises where such entertainment can be seen by patrons of the licensed premises shall remain at all times a minimum distance of ten (10) feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for the purpose, which shall be raised at least two (2) feet from the level of the floor on which patrons, customers or spectators are located.

(b) No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed premises or in areas adjoining the licensed premises where entertainment can be seen by patrons of the licensed premises shall fondle or caress any patrons, customers or spectators.

(c) No customers, spectators, or patrons of a licensed premises shall directly pay or give any gratuity to any dancer or performer, and no dancer or performer shall solicit any pay or gratuity from any patrons, customers or spectators.

(d) Except for licenses for a sexually oriented motel, a licensee shall not be open for business to the public during the following hours on the following days: Monday through Sunday: not open before 8:00 a.m. nor after 6:00 p.m.

(e) A licensee under this Chapter shall be responsible for the conduct of the sexually oriented business being operated and shall not allow any illegal activity to take place on or near the licensed premises,

including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this Chapter shall be deemed the act or omission of the licensee, if such act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.

(f) No sales, consumption or use of any alcoholic beverages shall be permitted at any time within the licensed premises.

Sec. 9-13. Additional Regulations For Adult Entertainment Uses.

(a) The City of Afton shall hereby reference in its entirety Minnesota State Statute 617.242 subd. (1), (2), (3), (4), (6), and (7) for additional regulations of adult entertainment uses above and beyond any of the requirements of this chapter.

Sec. 9-14. Additional Regulations For Escort Agencies.

(a) An escort agency shall not employ any person under the age of 18 years.

(c) A person commits a violation of this Chapter if that person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

Sec. 9-15. Additional Regulations For Nude Model Studios.

(a) Nude model studios shall not employ any person under the age of 18 years.

(d) A person commits a violation of this Chapter if he or she appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

Sec. 9-16. Additional Regulations For Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters.

(a) A person commits a violation of this Chapter if he or she knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually oriented theater or sexually oriented motion picture theater.

(b) It is a defense to prosecution under 9-15 (a) of this Section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

Sec. 9-17. Additional Regulations For Sexually Oriented Motels.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is a sexually oriented motel as that term is defined in this Section.

(b) A person commits a violation of this Chapter if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he or she rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, the person rents or subrents the same sleeping room again.

(e) For purposes of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 9-18. Regulations Pertaining To Exhibits of Sexually Explicit Films or Videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, or granted. A professionally prepared diagram in the nature of any engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Administrator.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose

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excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this section must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subclause 5 above, remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 9-17 (a)(1).
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level.
- (8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(b) A person having a duty under subclauses 1 through 8 of Section 9-17 (a), commits a violation of this Chapter if the person knowingly fails to fulfill that duty.

Sec. 9-19. Enforcement.

(a) Any violation of the provisions of this Chapter is a misdemeanor offense; and person violating a provision of this Chapter, upon conviction, is punishable by a fine not to exceed \$1,000.00 and/or (90) days in jail.

(b) It is a defense to prosecution under this Section that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school licensed by the State of Minnesota; a college, junior college, or university supported entirely or partly by taxation; or
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - (A) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (B) Where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - (C) Where no more than one nude model is on the premises at any one time.

Sec. 9-20. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this Chapter is subject to a suit for injunctive/equitable relief as well as prosecution for criminal violations.

Sec. 9-21. Severability.

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions and provisions of this Chapter. The City Council hereby declares that it would have adopted the Chapter and any sentence, clause, or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of this Chapter is declared invalid.

(Ord. 2005-15, 11/15/05)

State law references – Adult Entertainment Establishments, M.S.A. 617.242; authority for local regulation allowed, M.S.A. § 617.242, subd. 7.

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***Cross references** – Environmental assessment worksheets and environmental impact statements, § 12-89; radiation and electrical interference, § 12-202; storage of hazardous materials, § 12-203; explosives, § 12-204; environmental pollution, § 12-205; environmental nuisances, § 12-206; miscellaneous nuisances, § 12-207; noise § 12-208.

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ARTICLE I. IN GENERAL

Secs. 10-1--10-25. Reserved.

ARTICLE II. NUISANCES*

Sec. 10-26. Prohibition.

No person shall cause or permit any nuisance to exist or to be maintained upon property situated in the whole or in part within the limits of the city.

(Code 1982, § 1101.101)

Sec. 10-27. Enumeration.

Nuisances prohibited by this article include the following:

- (1) Obstructions and excavations affecting the ordinary use of or rendering dangerous a public street, alley, sidewalk, or other public property.
- (2) The maintenance of any tree or shrub, which causes damage to any public sewer, street, alley, sidewalk or other public property.
- (3) The allowing of rain, water, ice or snow to fall from any building onto, or to flow across any public street, alley, sidewalk or other public property.
- (4) To pump a cesspool so as to allow the contents thereof to flow onto another's private property or any street, alley, sidewalk or other public property.
- (5) The doing of any act which may alter or affect the drainage on, onto, or from public streets, alleys, sidewalks, or other public property, including but not limited to the placing of driveways, driveway entrances, or culverts.

(Code 1982, § 1101.102)

Sec. 10-28. Abatement.

Upon any nuisance being found in the city, the City Council may by majority vote, order the owner, lessee or occupant or any person having care or control of any such lot or land to abate the nuisance and shall issue a written notice to such person allowing five days after the service of notice for such person to comply.

(Code 1982, § 1101.103)

Cross reference(s)--Abatement of nuisance dogs, § 6-5.

Sec. 10-29. Assessment of cost.

If the nuisance is not abated within five days in compliance with the notice, the City Council shall cause the nuisance to be abated and shall recover the actual cost thereof, plus an additional 25 percent of such expenditure, by civil action against the person or persons served; or, if service of notice of assessment of such cost has been made upon the record owner, as shown on the records of the county auditor, by ordering the clerk to extend such sum, plus 25 percent thereof as a special tax against the property upon which the nuisance existed and to certify the same to the county auditor for collection in the same manner as taxes and special assessments are certified and collected.

(Code 1982, § 1101.104)

Secs. 10-30--10-65. Reserved.

***Cross references**—Determination of dogs as a public nuisance, § 6-4; abatement of nuisances caused by individual sewage treatment systems, § 12-2087; abatement of nuisance mining, § 12-2303.

State law references—Authority to define and abate nuisances, M.S.A. § 412.221, subd. 31; nuisances generally, M.S.A. § 561.01 et seq.

ARTICLE III. PROTECTING GROUND WATER AND SURFACE WATERS FROM FERTILIZER, PESTICIDE OR OTHER HERBICIDES

DIVISION 1. GENERALLY

Sec. 10-66. Intent and purpose.

This article is adopted for the purpose of:

(a) Regulating permitted uses in the city, and; regulating the use of certain lawn care practices. The use of certain lawn care practices within the city will be regulated to preserve and enhance the water quality of the lakes, ponds, wetlands, creeks, and St. Croix River, prevent erosion into these water bodies, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, protect fish and wildlife habitat, and preserve the economic and natural environmental values of the surface waters and underground waters of the city to the best of its ability.

(b) Conserving and developing natural resources, and maintaining a high standard of environmental quality.

Sec. 10-67. Statutory authorization and policy.

(a) Statutory authorization. This article is adopted pursuant to the authorization and policies contained in Minn. Stat. Ch. 103A-1, Minnesota Regulations, Parts 6120.2500-6120.3900, and the planning and zoning enabling legislation in Minn. Stat. Ch 462.

(b) Policy. The uncontrolled use of the waters and shorelands within the city, affects the public health, safety and general welfare by contributing to pollution of public waters and degradation of the environmental and aesthetic values and by impairing the local tax base. Also, the inability of local land use controls on areas where there is sensitivity to pollution of the bedrock aquifers and water table aquifers can greatly lead to the degradation of the ground water. Therefore, it is in the best interest in the public health, safety and general welfare to provide for the wise development, use, and conservation of the land and waters with the city. Furthermore, the Minnesota legislature has delegated responsibility to local governments of the state to regulate the subdivision, development and use of shorelands of public waters and thus to preserve and enhance the quality of surface waters, to manage the effects of shoreland crowding, to conserve the economic, historic and natural environmental values of shorelands, and to provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the city.

Sec. 10-68. General provisions and definitions.

(a) Jurisdiction. The provisions of this article apply to the entire city due to the fact that all lands drain runoff or surface water directly or indirectly into the lakes, streams, and tributaries of the St. Croix River.

(b) Correlation with other political units of government. In addition, to the following provisions as set forth in this ordinance all property owners shall also abide by Minnesota State Statute 18C, as well as any related WMO and Watershed District's rules and regulations in respect to ground water and surface water protection.

(c) Interpretation. In their interpretation and application, the provisions of this article shall be held as minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(d) Severability. If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

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(e) Abrogation and greater restrictions. The restrictions set forth in this chapter do not apply to flower or vegetable gardens less than 1,000 in square feet, except if they are within the buffer zone. In addition, all agriculture, rural or suburban, uses shall be exempt from this chapter.

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Sec. 10-69. Definitions.

Commissioner. “Commissioner” means the commissioner of agriculture.

Buffer zone. Buffer zone means the two hundred (200) foot wide strip of land, measured at a right angle to the shoreline or the ordinary high water level, adjacent to every lake, pond, wetland, creek, river or standing water surface.

Fertilizer. Fertilizer means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth. Fertilizer does not include animal and vegetable manures that are not manipulated, marl, lime, limestone, and other products exempted by rule by the commissioner.

Flower or vegetable gardens. The use of land for growing or showing plants and vegetables for private use or consumption.

Half-life. The period of time it takes for one-half of the amount of pesticide in the soil to degrade.

Lot. Lot means a parcel of land designed by plat, metes and bounds, registered land survey, auditor’s plat, or other accepted means, and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

Pesticide. Pesticide means insecticides, herbicides and fungicides.

Quick-release nitrogen. Quick-release nitrogen means ammonium nitrate, ammonium sulfate, creek or river within the city.

Slow-release nitrogen. Slow-release nitrogen means IBDU (isobutylidene diurea), sulfur-coated or resin-coated urea, ureaformaldehyde, bio-sludge from a WWTP, and natural organics such as milorganite, ringer, sustane, manure, grass clippings, phosphate rock, potash, and sewage sludge from the wastewater treatment plant.

Sec. 10-70. Restrictions.

(a) Fertilizers.

- (1) Fertilizing is prohibited between November 15th and April 1st due to frozen soil conditions.
- (2) Lot owners who fertilize should have their soil tested at least once every three years by a soil test laboratory such as the University of Minnesota to determine the proper amounts of nitrogen and potassium to be applied.
- (3) Fertilizer, yard waste or grass clippings must not be cast up or applied to an impervious surface such as a driveway, sidewalk, or street. If this material is inadvertently spilled upon such a surface it should be swept and cleaned from the surface or piled in drainage ways.
- (4) Whenever possible property owners shall use fertilizers with a half life of seven days. A listing of fertilizers which meet this requirement of the ordinance will be available at the City Hall.
- (5) The use of fertilizer on vegetable or flower gardens is prohibited in the buffer zone.

(b) Compost Sites.

- (1) Compost sites shall not be permitted within any buffer zone.

(c) Phosphorus.

- (1) General. Fertilizers containing phosphorus are prohibited on lawns unless the soil is demonstrably phosphorus deficient. Phosphorus may be applied if the following conditions apply or are met:

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- A. A tissue, soil or other test by a laboratory or method approved by the commissioner and performed within the last three years indicates that the level of available phosphorus in the soil is insufficient to support healthy turf growth;
 - B. The property owner or an agent of the property owner is first establishing turf via seed or sod procedures, and only during the first growing season; or
 - C. The fertilizer containing the plant food phosphorus is used on a golf course under the direction of a person licensed, certified, or approved by an organization with an ongoing training program approved by the commissioner.
 - D. Applications of phosphorus fertilizer authorized under paragraph (b) must not exceed rates recommended by the University of Minnesota and approved by the commissioner.
 - (2) Flower and vegetable gardens. Fertilizer containing no more than three (3) percent phosphorus is permitted on flower and vegetable gardens not located within the designated buffer zone.
- (d) Nitrogen.
- (1) Application of more than 2 pounds actual nitrogen per 1,000 square feet of lawn per year on “low maintenance” lawns applied at 1 pound in the spring and 1 pound in the fall and of more than 4 pounds actual nitrogen per 1,000 square feet of lawn per year on “high maintenance” lawns applied at 2 pounds in the spring and 2 pounds in the fall is prohibited unless the lot owner has a written recommendation from a competent professional based upon a reliable soil test for higher nitrogen applications.
 - (2) Only 50 percent controlled slow-release nitrogen organic fertilizer may be used. The use of quick-release nitrogen is prohibited.
 - (3) If nitrogen is applied at rates greater than those specified in subsection (1) above, the lot owner must provide copies of the written recommendation required therein to the city forester.
- (e) Pesticides (insecticides, herbicides, and fungicides).
- (1) The use of chemical pesticides shall be in accordance with their label.
 - (2) Before using chemical pesticides, the lot owner must consult the Minnesota Extension Services, the Washington Conservation District or other competent professional to diagnose properly the pests, disease or other vegetative problems, and to determine if pesticide use is justified or if there are other control options.
 - (3) When consultation as provided under subparagraph (b) has determined that pesticide use is warranted, a pesticide program may be implemented, provided that:
 - A. When choosing a pesticide, the lot owner must consider toxicity, effectiveness, and availability. The city discourages stockpiling of supplies.
 - B. The pesticide must be applied only and exactly as directed on the label.
 - C. Pesticide applications must be properly timed to maximize their overall effectiveness.
 - D. Pouring of excess pesticide on the ground or into the lakes or other surface waters is prohibited.
 - E. Pesticide treatment of aquatic organisms is limited to licensed professionals and may not be performed by landowners.

DIVISION 2. COMMERCIAL LAWN FERTILIZER REGULATIONS

Sec. 10-71. Regulations for commercial lawn fertilizer applicators.

(a) License required. No person, firm, corporation or franchise shall engage in the business of commercial lawn fertilizer application within the City of Afton, unless a license has been obtained from the city clerk as provided herein.

(b) License application procedure. Applications for a commercial lawn fertilizer license shall be submitted to the city clerk. The application shall consist of the following:

- (1) Name, address and telephone number of applicant and any individuals authorized to represent the applicant.
- (2) Description of lawn fertilizer formula proposed to be applied on lawns within the city

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- (3) A time schedule for application of lawn fertilizer and identification of weather conditions acceptable for lawn fertilizer application.
- (4) Fertilizer sample. A sample of lawn fertilizer must be submitted to the city along with the initial application for a license, and, thereafter, at least 30 days before fertilizer composition changes are implemented. A sample submittal can be replaced by a chemical analysis certified by an independent testing laboratory.
- (5) License fee. The license fee will be as designed, from time to time, by city council resolution. The license will expire on the 31st day of December. The license fee will not be prorated.
- (6) Performance bond. A bond will also be submitted with the application form in an amount to be determined at the discretion of the council. The bond will be conditioned upon compliance with the city's regulations. Actions to collect bond proceeds may not prevent the city from filing criminal complaints for ordinance violations.

(c) Conditions of license. A commercial lawn fertilizer applicator license shall be issued subject to the following conditions which shall be specified on the license form:

- (1) Random sampling. Commercial lawn fertilizer applicators shall permit the city to sample any commercial lawn fertilizer to be applied at any time after issuance of the initial license.
- (2) Possession of license. The commercial lawn fertilizer applicator license or a copy thereof shall be in the possession of any party employed by the commercial lawn fertilizer applicator when making lawn fertilizer applications within the City.
- (3) State regulations. Licensee shall comply with the provisions of the Minnesota Fertilizer and Soil Conditioner Law as contained in Minn. Stat 17.11 through and including 17.729 and amendments thereto.
- (4) Compliance with city regulations. The licensee must abide by the restrictions on the use of fertilizers and pesticides that are contained in this article.

Sec. 10-72. Enforcement.

(a) Enforcement. The city council is responsible for the administration and enforcement of this article.

(b) Violations and penalties. Any violation of the provisions of this article 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) shall constitute a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or both, plus the cost of prosecution in any case. Violations of this article can occur regardless of whether or not a permit is required for a regulated activity pursuant to this article.

(c) Civil remedies. This article may also be enforced by injunction, action for abatement, or other appropriate civil remedy, or by citation written and processed as an administrative proceeding in city court.
(Ord 7-2005, § 25-1 – 25-7, 5/17/2005; Ord 10-2005, § 25-1 – 25-7, 6/21/2005)

Secs. 10-73 -- 10-90. Reserved.

(Ord 06-2013, § 10-66 – 10-72, 3/19/2013)

ARTICLE IV. TREE DISEASES

Sec. 10-91. Adoption of county model regulations.

The September 5, 1972, resolution of the board of county commissioners of the county, setting forth regulations to prevent, control and eliminate epidemic diseases of shade trees, is hereby adopted by reference in its entirety except as modified in section 10-92. Not less than three copies of such resolution are on file in the office of the city clerk.

(Code 1982, § 1102.101; Res. No. 1997-16, § 4, 6-17-97)

Sec. 10-92. Modifications to county regulations.

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Wherever used in the model regulations adopted in section 10-91, the words "county" or "County of Washington" shall mean the city, and the words "county board" shall mean the City Council, insofar as may be necessary to effectuate the policy of this article, which is hereby declared to be to cooperate with and participate in the program of the county to prevent, control and eliminate epidemic diseases of shade trees. (Code 1982, § 1102.102; Res. No. 1997-16, § 4, 6-17-97)

Secs. 10-93—10-110. Reserved.

ARTICLE V. RIGHT TO FARM

Sec. 10-111. Short title.

This chapter shall be known and may be cited as the Right-to-Farm Ordinance.

Sec. 10-112. Definitions.

For the purpose of this section, the following terms have the meanings given them:

(a) "Agricultural operation" means a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.

(b) "Established date of operation" means the date on which the agricultural operation commenced. If the agricultural operation is subsequently expanded or significantly altered, the established date of operation for each expansion or alteration is deemed to be the date of commencement of the expanded or altered operation. As used in this paragraph, "expanded or significantly altered" means:

- (1) An expansion by at least 25 percent in the amount of a particular crop grown or the number of a particular kind of animal or livestock located on an agricultural operation; or
- (2) A distinct change in the kind of agricultural operation, as in changing from one kind of crop, livestock, animal or product to another, but not merely a change from one generally accepted agricultural practice to another in producing the same crop or product.

Sec. 10-113. Nuisance.

(a) An agricultural operation is not and shall not become a private or public nuisance after two years from its established date of operation if the operation was not a nuisance at its established date of operation.

(b) An agricultural operation is operating according to generally accepted agricultural practices if it is located in an agriculturally zoned area and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation.

(c) The provisions of this Section do not apply:

- (1) to a condition or injury which results from the negligent or improper operation of an agricultural operation or from operations contrary to commonly accepted agricultural practices or to applicable state or local laws, ordinances, rules, or permits;
- (2) when an agricultural operation causes injury or direct threat of injury to the health or safety of any person;
- (3) to an animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the pollution control agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more; or
- (4) to any prosecution for the crime of public nuisance as provided in section 609.74 or to an action by a public authority to abate a particular condition which is a public nuisance.

Sec. 10-114. Disclosure in development permits.

Prior to the issuance of any development permit for a use on agricultural land, the owner of the property shall be required to sign a statement of acknowledgment containing a Right-to-Farm disclosure, as set forth in Sec. 10-115.

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The acknowledgment shall be on a form provided by the Zoning Administrator and made available to the public. The Zoning Administrator shall file development permit disclosure forms with the Washington County Recorder.

Sec. 10-115. Disclosure to buyers.

Upon any transfer of real property, subject to the acknowledgement required in Sec. 10-114, by sale, exchange, installment and sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, the transferor shall deliver to the prospective transferee a Right-to-Farm disclosure statement signed by the transferee to be filed with the Washington County Recorder in conjunction with the transfer instrument.

Sec. 10-116. Repeal of Laws in Conflict.

All City Ordinances applying in conflict with any provisions of this Ordinance are hereby repealed.
(Ord 1997-24, 6/15/99)

Secs. 10-117 – 10-118. Reserved.

***Cross references** – Wind Energy Systems, § 12-229 C.3.a. Performance standards, noise; agricultural operations, § 12-189;

ARTICLE VI. TREE PRESERVATION AND REFORESTATION

Sec. 10-119. Purpose.

The intent of this ordinance is to preserve, protect, maintain, and manage the community's existing forest resource and the planting of trees to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce storm water supplies; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction of grading; provide a haven for birds which in turn assist in the control of insects; protect and increase property values; conserve and enhance the City's physical and aesthetic environment and generally protect and enhance the quality of life and the general welfare of the city.

Sec. 10-120. Affected Areas.

This Ordinance shall apply to the following areas or applications to the City:

- (a) Any subdivision, regardless of the particular zoning district.
- (b) Any planned unit development.

Sec. 10-121. 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:

Diameter. The measurement of a tree's trunk measured at 4.5 feet above the ground.

Drip line. The farthest distance away from the trunk of a tree that rain or dew will fall directly to the ground from the leaves or branches of the tree.

Forestry Specialist. A landscape architect or forester who has been retained by the applicant.

Lost significant trees within subdivisions, planned unit developments, new construction permits, excavation and fill permits, or other land alteration permits, which were not identified to be lost within a tree preservation plan, shall be considered lost as a result of:

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- (a) Grade change or land alteration, whether temporary or permanent, of greater than one (1) foot; or
 - (b) measured vertically affecting sixty (60) percent of the tree's root zone; or
 - (c) Primary construction (i.e. sewer, water, storm sewer, gas, electric, telephone and cable television and trenching) resulting in the cutting of sixty (60) percent of the tree's roots at or within the root zone; or
 - (d) Mechanical injury to the trunk of a significant tree causing the loss of forty (40) percent of the circumference of the bark; or
 - (e) Compaction to ninety (90) percent of proctor to a depth of six (6) inches, or more, of sixty (60) percent or more of the surface of the soil within the tree's root zone.
- (Ord 1997-33, 5/16/00)

Primary construction zones within Subdivision or Planned Unit Development applications. All areas disturbed by construction of streets, sanitary sewer, water, storm sewer, gas, electric, telephone and cable television and trenching.

Replacement Trees must be at least two (2) caliper inches as defined by the American Standard for nursery stock (ANS 1-2-60) current edition for deciduous trees and at least six (6) feet high for coniferous trees. Replacement trees shall be of the following genus: maple, linden, honey locust, oak, ash, bass wood, birch, fir, spruce, pine and other trees native to Minnesota, or the City.

Secondary construction zones within Subdivision or Planned Unit Development applications. All area that is occupied by a structure, driveways, parking areas, areas above utility lines (including sanitary sewer, water, storm sewer, electric, cable television, natural gas, telephone and other similar utilities), Plus an additional portion of the lot which extends from the furthest projection of the structure thirty (30) feet surrounding the proposed building area. This shall also include areas extending ten (10) feet beyond all edges of the driveway and paved areas and five (5) feet beyond the edge of the utility line trench.

Significant trees. A healthy deciduous tree measuring six (6) inches in diameter or greater or a healthy coniferous tree measuring four (4) inches greater in diameter.

Tree. Means a woody plant which at maturity is thirteen (13) to twenty (20) feet or more in height and having a more or less definite crown.

Tree preservation plan within Subdivision and Planned Unit Developments. A plan certified by a forester or landscape architect, indicating all of the significant trees in the proposed development or subdivision. The tree preservation plan shall include the size, species and surveyed location of all significant trees within the area of development, primary or secondary construction zones. A tree replacement plan must also be submitted if the proposed tree loss exceeds the allowable percentage of tree loss.

Tree preservation plan within Subdivisions and Planned Unit Developments for new home construction. The applicant for new home construction must provide a site plan on a certified survey indicating the tree preservation plan originally submitted and approved during the subdivision or planned unit development process. Any additional tree loss not approved during the subdivision and planned unit development process must follow the replacement guidelines. Furthermore, security of \$1,000 will be held until the replacement trees have been planted and successfully survived for a period of one year from the date of planting. If no replacement trees are anticipated, the security will be reduced to \$500 and be remitted to the applicant upon successful completion of the final occupancy inspection which has verified the tree preservation plan has been followed. No deposit is required when there are no significant trees on the lot.

Tree preservation plan within indicated "Wooded Areas" for new construction, excavation and fill permits or any other land alteration permits. This applicant must provide a tree preservation plan certified by a forester, landscape architect indicating all of the significant trees in the proposed construction area. (For purposes of

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applying this definition, construction area shall include all areas to be disturbed by grading for excavation and fill permits and 30 feet surrounding the building pad area, 10 feet along driveways). The tree preservation plan shall include the size, species and location of all significant trees within the area and identify trees which would be removed. Replacement of the trees must adhere to the tree replacement guidelines set forth below. Single or individual lot development would not be required to submit this plan.

Tree protection. Snow fencing or erosion control fencing placed at the drip line of significant trees to be preserved. The tree protection measures shall remain in place until all primary grading activity is terminated and the forestry specialist has certified to the city that the tree preservation plan has been followed. Fencing must be placed on a lot by lot basis, as new structures are constructed. A tree survey will be submitted by a registered landscape architect, licensed forester or other professional approved by the City, to determine existing baseline canopy coverage. In addition, two trees will be planted in the boulevard per 100 feet of front footage on any subdivision. (Ord 1997-33, 5/16/00)

Tree root zone. The area under a significant tree which is at and within the drip line of the tree.

Sec. 10-122. Replacement Guidelines.

Tree replacement within Subdivisions and Planned Unit Developments. Tree replacement shall be required if primary and secondary construction remove more than 30% of the significant trees. Every tree lost beyond 30%, shall require replacement at a rate of ½ inch for every 1 inch of tree loss. The applicant must supply a tree replacement plan which has been certified by a forestry specialist.

Tree replacement within Subdivisions and Planned Unit Developments for new home construction. Significant tree loss occurring beyond the indicated tree preservation plan as submitted during the Subdivision or Planned Unit Development process shall require tree replacement at a rate of one (1) inch for every inch of tree lost. If during construction, a tree is lost (unplanned), as described in the definition section, the replacement rate increases to two (2) inches for every inch of tree lost.

Sec. 10-123. Reforestation Guidelines.

Reforestation. In the event of a subdivision or PUD in an area where there are less than 15 trees per acre, reforestation will occur to achieve this ratio. The following criteria will be used to determine reforestation:

- (a) Trees must be from the approved list of desirable species,
- (b) No more than 1/3 of the trees may be from any one tree genus,
- (c) Not less than 20% of the trees shall be conifers,
- (d) Tree replacement sizes will be followed and
- (e) Trees shall be used that are appropriate to the soil conditions found on site.
- (f) Two trees (consistent with tree replacement standards and included as part of the overall calculation for reforestation) will be planted in the boulevard per 100 feet of frontage in any subdivision.

Sec. 10-124. Security for Tree Replacement and Reforestation.

Security within Subdivisions or Planned Unit Developments. A letter of credit, cash, or escrow will be provided by the applicant, in favor of the City, in an amount of 150% of the tree replacement estimate. If the project requires securities for other improvements, this amount will be held in the same security. If a Subdivision or Planned Unit Development does not require replacement, a \$10,000 security will be held until certification of the forestry specialist has been submitted indicating the tree preservation plans have been followed.

Security within Subdivisions or Planned Unit Developments for new home construction. Security, in the form of

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a letter of credit, cash, or escrow will be provided by the applicant, in favor of the City, in the amount of \$1,000 (charged with the building permit fees) will be held until the replacement trees have been planted and successfully survived for a period of one year from the date of planting. If no replacement trees are anticipated, the security will be reduced to \$500 and be remitted to the applicant upon successful completion of the final occupancy inspection which has verified the tree preservation plan has been followed. (The deposits are not deemed to be in lieu of tree replacement.)

Security for new construction, excavation and fill permits, or other land alteration activities, not within a Subdivision or Planned Unit Development. Security, in the form of a letter of credit, cash, or escrow will be provided by the applicant, in favor of the City, in the amount of \$1,000 (charged with the building permit fees) will be held until the replacement trees have been planted. If no trees are planned to be replaced, but significant trees are located on the construction area, the security will be reduced to \$300. At the point of final inspection for new construction or an inspection after the permit work has been completed, and has complied with the tree preservation plans, the deposits will be returned to the applicant.

Sec. 10-125. Remedies for issues with the Tree Preservation Ordinance.

If disputes arise as a result of this applying this ordinance, the City Council may gather information regarding the situation and determine the best remedy for the dispute.
(Ord 1997-33, 5/16/00)

Sec. 10-126 – 10-129. Reserved.

ARTICLE VII. OPEN BURNING PROHIBITED

Sec. 10-130. Purpose.

It shall be unlawful for any person to start or allow to burn, any open fire on any property within the city without first having obtained a “burn permit” from the Lower St. Croix Valley Fire Protection District, except for supervised recreational or cooking fires contained within approved fire rings, pits or barbecue grills.

Sec. 10-131. Definitions.

“Recreational fires” are defined as being three feet in diameter at the base with flame height not exceeding 3 feet and is fueled only by natural wood with logs 3 inches in diameter or larger. Fires fueled by other materials, including but not limited to treated or painted wood, plastic, rubber, leaves, grass, trimmings or any garden or yard vegetation, regardless of size, are not recreational fires.

Sec. 10-132. Recreational fires.

- (a) Recreational fires must be:
 - (1) Constantly attended by a person until the fire is totally extinguished.
 - (2) Shall not be conducted within 15 feet of a structure or combustible material.
 - (3) Take place on the owner’s property and shall be a minimum of 5 feet from property lines.
- (b) A means of quickly extinguishing the fire must be readily available for immediate use. Acceptable on-site fire extinguishing means include at least one of the following:
 - (1) Portable fire extinguisher with a minimum 4-A rating.
 - (2) A shovel with readily available dirt or sand.
 - (3) A hooked up and operational garden hose, or a water barrel.

Sec. 10-133. Burning Ban.

When a burning ban has been issued by the Commissioner of the Minnesota Department of Natural Resources or other authorized unit of government, the city reserves the right to suspend all recreational fires for the duration of the ban.

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Sec. 10-134. Extinguishing fires.

A fire must be extinguished if it is smoldering or becomes a nuisance (i.e., annoys, causes injuries, or endangers health, safety, comfort, or repose of the public) to others or if not under supervision.

Sec. 10-135. Responsibility.

Recreational fires on property of multi-family residences or on rental property are the responsibility of property management or association. When applicable residents must adhere to property management/association rules/regulations and these guidelines.

Sec. 10-136. Public Nuisance.

Failure to comply with this ordinance constitutes a public nuisance and, in addition, is subject to a fine equal to the costs of Fire Department actions needed to ensure compliance and safeguard life and property.
(Ord. 01-2010, 2/16/10)

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¹ **Cross references** – Planning Commission, § 2-141 et seq.; natural resources and groundwater commission, § 2-186 et seq.; utilities, Ch. 24.

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ARTICLE I. IN GENERAL

Secs. 12-1--12-50. Reserved.

ARTICLE II. ZONING²

DIVISION 1. GENERALLY

Sec. 12-51. Short title.³

This article may be cited as the Zoning Ordinance.

Sec. 12-52. General purposes.⁴

The general purposes of this article are to provide for the orderly growth and renewal of the City, to protect and conserve its natural resources, its ecological systems and its economic stability by fostering appropriate land use, so as to preserve and promote the public health, safety and general welfare.

Sec. 12-53. Specific purposes.⁵

It is hereby determined by the City Council that in order to accomplish the general purposes of this article as set forth in Section 12-52, it is necessary and proper to establish and enforce the regulations contained in this article for the following specific reasons:

- A. Stage development and redevelopment to coincide with the availability of necessary public services.
- B. Divide the community into districts, providing for and regulating therein the location, construction, reconstruction, alteration and use of buildings, structures and land for residential, business, commercial, industrial and other specified uses.
- C. Protect the character and maintain the stability of residential, business, commercial and industrial areas within the community, and prohibit uses, buildings or structures which are incompatible with the character of development in such areas.
- D. Provide adequate light, air, privacy and convenience of access to property.
- E. Limit congestion in public streets and to foster public safety and convenience in travel and transportation.
- F. Provide protection against fire, explosions, obnoxious fumes and other hazards in the interest of public health, safety and comfort.
- G. Prevent environmental pollution.
- H. Conserve natural resources and to prevent their destruction or improvident exploitation.
- I. Preserve the value of land and buildings throughout the community.
- J. Provide for the gradual and equitable elimination of those uses of land, buildings and structures, and of those buildings and structures which do not conform to the standards for the area in which they are located and which may adversely affect the development and the value of property in such areas.

² **Cross references** – Planning Commission to hold public hearings regarding zoning ordinances, § 2-148; zoning and water supply sanitary requirements for shoreline management, § 12-401 et seq.

³ Code 1982, § 301.101

⁴ Code 1982, § 301.201

⁵ Code 1982, § 301.202

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- K. Provide for the enforcement of this article and to define and limit the powers and duties of the administrative officers and bodies responsible therefore.
- L. Protect and preserve economically viable agricultural land.
- M. Provide for the wise use and conservation of energy resources.
- N. Implement the City's Comprehensive Land Use Plan as prepared by the Planning Commission and adopted by the City Council.

Sec. 12-54. Interpretation and construction.⁶

- A. In the application of this article, the provisions thereof shall be interpreted to be the minimum requirements necessary to accomplish the general and specific purposes of this article.
- B. Nothing contained in this article shall be deemed to be a consent, license or permit to use any property or to locate, construct or maintain any building, structure or facility or to carry on any trade, industry, occupation or activity.
- C. Except as herein provided, the provisions of this article are cumulative and in addition to the provisions of other laws and ordinances, heretofore passed or which may be passed hereafter, governing the same subject matter as this article.

Sec. 12-55. Definitions.⁷

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

Accessory building or structure means a subordinate building or structure which is located on the same lot as the main building and the purpose of which is incidental to that of the principal building.⁸

Accessory use means a use related or subordinate to the principal use of the same land.

Administrator means the City Zoning Administrator.

Agricultural building means a structure on agricultural land as defined in "agricultural, rural," of this section, designed, constructed, and used to house farm implements, livestock or agricultural produce or products used by the owner, lessee or sub-lessee of the building and members of their immediate families, their employees and persons engaged in the pickup or delivery of agricultural produce or products according to MN State Statutes 326B.103.

Agriculture, rural is a commercial food producing use on ten or more contiguous acres and is defined under a portion of Minnesota Agricultural Property Tax Law (Green Acres Law) M.S.A. § 273.111, subd. 6, Agricultural Property Tax: Real property shall be considered to be in agricultural use provided that annually it is devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, apiary products and activities incidental thereto.

Agriculture, suburban is a noncommercial food producing use primarily intended for the use of the residents and usually on less than ten contiguous acres. Suburban agricultural uses may include production of crops such as fruit trees, shrubs, plants, flowers, vegetables and domestic pets.

⁶ Code 1982, § 301.203

⁷ Code 1982, § 301.301; Res. No. 1997-5, 2-11-97; Res. No. 1997-16, § 9, 6-17-97; Ord. No. 1997-19, 7-15-97; Ord. No. 02-2011, 7-19-2011.

Cross reference(s)--Definitions generally, § 1-2.

⁸ See Section 12-178.

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Animal impounding facility means a not for profit organization whose primary purpose is to provide animal impounding services and adoption of impounded animals for the City and adjacent communities. Animal impounding facilities which meet the criteria specified herein shall not be considered commercial kennels:

- A. More than 30 percent of the facility's income shall be derived from the impounding of stray animals.
- B. Less than ten percent of the facility's income may be derived from the sale of pet food, leashes, pet training, and other activities incidental to the impounding and adoption of animals.
- C. No breeding of animals for sale or any other purpose shall be done on the premises.
- D. Structure shall be completely enclosed to prevent noise from reaching adjacent properties. Structure shall be required to meet architectural standards required in this Code and City ordinances.
- E. Proper and healthful disposal of animal waste and dead animals shall be required.
- F. Lighting, fencing, screening, berming, etc., may be required by the City.
- G. Other conditions as may be deemed reasonable by the City.

Animal unit means a unit of measure used to compare differences in the production of animal wastes which has a standard as the amount of waste produced on a regular basis by a slaughter steer or heifer.

Animals, domestic farm means cattle, hogs, horses, bees, sheep, goats, chickens and other animals commonly kept for commercial food producing purposes.

Animals, domestic pets means dogs, cats, birds and similar animals commonly kept in a residence. Animals considered wild, exotic or non-domestic such as bears, lions, wolves, ocelots and similar animals shall not be considered domestic pets.

Apartment means a room or suite of rooms with cooking facilities designed to be occupied as a residency by a single family.

Area, net developable, means those lands within a development parcel remaining after the deletion of floodplains, wetlands, slopes greater than 13 percent and unbuildable easements or rights-of-way.

Automobile repair 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 body and fender work, minor painting and upholstering service when such service above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

Automobile service station (gas station) means a place where gasoline, kerosene, or any other motor fuel, lubricating oil, or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles. This definition includes greasing and oiling and the sale of automobile accessories on the premises. This definition also includes minor repairs, incidental body and fender work, painting or upholstering, replacement of parts and motor services to passenger automobiles and trucks not exceeding 1½ tons capacity. This definition shall not include major repair, rebuilding or reconditioning of engines, motor vehicles, or trailers; collision service, including body, frame or fender straightening or repair; overhaul, painting, or paint job; vehicle steam cleaning; or automatic car or vehicle washing devices.

Automobile service uses means those uses catering to the travelling public. These include auto and truck laundry, drive-in business, service station, repair garage, public garage, motel, hotel, seasonal produce sales, motor vehicle sales, trailer sales and rental, boat sales, rental services and restaurants.

Basement means that portion of a building that is partly or completely below grade (see “Story Above Grade”).⁹

Bed and breakfast means a residence at which at most two rooms may be rented to a maximum of four persons to whom breakfast but no other meal may be served.

Bluff means a topographic feature such as a hill, cliff or embankment, except as provided in the Lower St. Croix bluffland and shoreland district, having the following characteristics:

- A. A slope of 18 percent or greater as measured over horizontal distances of 50 feet or more.

⁹ Ord 02-2011, 7/19/2011

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- B. The slope drains towards the water body, river or adjoining watershed channel.
- C. Part or all of the feature is located in the shoreland district.

Bluff impact zone means land located within 40 feet from a crest of a bluff.

Bluffline means a line along a crest of a slope connecting the points at which the slope, proceeding away from the waterbody, river or adjoining watershed channel becomes less than 18 percent and only includes slopes greater than 18 percent which drains toward the waterbody, river or adjoining watershed channel, except as provided in Section 12-579.

Boardinghouse means a building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals and/or sleeping rooms are provided for three or more unrelated persons, but not to exceed eight persons. Access to all boarding rooms shall be through the main entrance of the house; no boarding room shall have separate access.

Buildable area means all land having a slope of 13 percent or less having enough suitable soil for the installation of two on-site sewage treatment systems and that land having a slope between 13 and 18 percent meeting the requirements of Section 12-132(B)(11). Buildable area does not include floodplains, wetlands, ponds, lakes and other bodies of water; parks, scenic and conservation easements or other unbuildable easements; steep slopes or rights-of-way. Buildable area may include required building setbacks.¹⁰

Building means any structure, either temporary or permanent, having a roof, and used or built for the shelter or enclosure of any person, animal, or chattel of property of any kind. When any portion thereof is completely separated from every other part thereof by division walls from the ground up, and without openings, each portion of such building shall be deemed a separate building.

Building code means the Minnesota State Building Code.

Building official means the officer or other designated authority, certified by the state under M.S.A. § 16-861, charged with the administration and enforcement of the state building code, or his duly authorized representative. Also known as the City Building Official.

Building setback line means a line within a lot parallel to a public right-of-way line, a side or rear lot line, a bluffline or a high water mark or line, behind which buildings or structures must be placed.

Business means any occupation, employment, or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

Carport means an automobile shelter having one or more sides open.

Certificate of occupancy. See Section 12-87.

Channel means a natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water, including but not limited to streams, rivers, creeks, ditches, drainage ways, canals, conduits, culverts, waterways, gullies, ravines or washes; and including any area adjacent thereto which is required to carry and discharge the regional flood.

Channel flow means that water which is flowing within the limits of the defined channel.

Church see *Places of Worship*¹¹

Club or lodge means a nonprofit association of persons who are bona fide members paying annual dues, use of premises being restricted to members and their guests. The serving of food and meals on such premises is permissible providing adequate dining room space and kitchen facilities are available. Serving of alcoholic beverages to members and their guests shall be allowed, providing such serving is secondary and incidental to the operation of the dining

¹⁰ Ord 1997-10, 5/19/1998

¹¹ Ordinance 5-2005, 4/19/2005

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room for the purpose of serving food and meals and providing further that such serving of alcoholic beverages is in compliance with the applicable federal, state, county and city laws.

Commercial. See Section 12-134 for permitted uses.

Commercial recreation means a bowling alley, cart track, pool hall, vehicle racing or amusement, dancehall, skiing, skating, firearms range, golf driving ranges, miniature golf or putting courses, golf training facilities and similar uses.

Commercial school means a nonpublic school, charging a fee for instruction, serving a maximum of 25 students per day with adequate on-site sewage treatment and off-street parking for such students.

Comprehensive plan means the policies, statements, goals and interrelated plans for private and public land and water use, transportation and community facilities, including recommendations for planned execution, documented in texts, ordinance and maps which constitute the guide for the future development of the community or any portion of the community.

Conditionally Permitted Use means the uses specifically designated in each zoning use district, which for their respective conduct, exercise or performance may require reasonable, unique or extraordinary conditions in such use district for the promotion or preservation of the general public welfare, health, convenience or safety therein and in the City, and therefore may be permitted only by a Conditional Use Permit.

Council means the governing body of the City.

Curb level means the grade elevation established by the building official of the curb in front of the center of the building. Where no curb level has been established, the City shall determine a curb level or its equivalent for the purpose of this article.

Decibel means the unit of sound measured on the "A" weighing scale of a sound level meter, set on slow response, the weighing characteristics of which are specified in the latest revision of 'Standards on Sound Level Meters of the USA Standards Institute'.

Disposal area, sewage means that ground within the confines of the lot that does not contain buildings and has an elevation at least 80 inches above the highest known or calculated water table or bedrock formation and does not slope in excess of 13 percent.

Dredging means the process by which soils or other surface materials normally transported by surface water erosion into a body of water, are removed for the purpose of deepening the body of water.

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 within a building. A drive-in shall also include any restaurant, cafe, or other food and drink business which offers take home prepared food or food which can be carried outside of the building for human consumption; any and all restaurants commonly known as fast-food operations.

Dwelling means a building or one or more portions thereof occupied or intended to be occupied exclusively for human habitation, but not including rooms in motels, hotels, nursing homes, boardinghouses, nor trailers, tents, cabins, or trailer coaches.

Dwelling unit means a residential accommodation, which is arranged, designed, used or intended for use exclusively as living quarters for one family.

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 or purposes.

Engineer means the City Engineer.

Essential services (public utility uses) means underground or overhead gas, electrical, steam or water distribution systems; collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes,

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conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, or other similar equipment, accessories and buildings in conjunction therewith.

Exterior storage (includes open storage) means the storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

Facilities for Institutionalized Persons means housing for students, mentally ill, infirm, elderly, nurses, physically retarded, and similar housing of a specialized nature.

Family means an individual, or two or more persons each related by blood, marriage, adoption, or foster care arrangement living together as a single housekeeping unit, or a group of not more than four persons not so related, maintaining a common household, exclusive of usual servants.

Farm. (See also Agriculture, rural.)

¹²*Farmers market* means a group of vendors with separate but adjacent outside sales stands, who sell mostly fresh produce and other garden vegetation for consumption, use or replanting, along with accessory items clearly related to the consumption of such products. In addition, up to 20% of the total number of vendors at a farmers' market may sell food products, craft, art, or similar items as all or part of their goods for sale.

Feed lot means the place of confined feeding of livestock or other animals for food, fur, pleasure, or resale purposes in yards, lots, pens, buildings, or other areas not normally used for pasture or crops and in which substantial amounts of manure or related other wastes may originate by reason of such feeding of animals.

Fence means a partition, structure, wall, or gate erected as a dividing marker, barrier, or enclosure.

Fill means any act by which soil, earth, sand, gravel, rock, or any similar material is deposited, placed, pushed or transported and shall include the conditions resulting therefrom.

Final plat means a drawing or map of an approved subdivision, meeting all requirements of the subdivision ordinance, and in such form as required by the City for purposes of recording. (See the subdivision ordinance, article VI of this chapter.)

Flood. See the floodplain ordinance, article V of this chapter.

Floor area means the gross area of the main floor of a residential building measured in square feet and not including an attached garage, breezeway, or the like.

Floor area, gross means the sum of the gross area of the various floors of a building measured in square feet. The basement floor area shall not be included, other than that area devoted to the same use as the principal use of the building.

Floor area ratio means the numerical value obtained by dividing the gross floor area of a building or buildings by the net area of the lot or parcel of land on which such buildings are 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 construction plans.

Frontage means that boundary of a lot which abuts an existing and improved public right-of-way.

Garage, private means a detached one-story accessory building, or portion of the principal building, including a carport, which is used primarily for the storing of passenger vehicles, trailers or farm trucks.

Garage, repair means a building or space for the commercial repair or maintenance of motor vehicles, but not including factory assembly of such vehicles, auto wrecking establishments, or junk yards.

Garage sale means an offering of goods to the public on a temporary basis by a person or organization at a sale site which is not principally used for the purpose of retail sales and where no other license or permit has been issued by the City authorizing such sales. As used in this article, the term "garage sale" encompasses yard sales, estate sales,

¹² Ord 01-2015; 05-19-2015

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moving sales, block sales, rummage sales, boutiques and related sales where secondhand or other goods are sold or displayed to members of the public on a temporary basis. "Garage sale" as used in this article does not include estate sales or auction sales, provided the number of sales in any calendar year does not exceed the limitations imposed by this article, and further provided that such sale is conducted by a licensed auctioneer.

Garage, storage means any premises, except those described as a private or public garage, used exclusively for the storage of power driven vehicles.

Golf course. A golf course, as permitted by this article, shall have a minimum parcel size of 40 acres for a nine-hole par three course and 100 acres for a regulation 18-hole course. Golf course does not include miniature golf or putting courses, driving ranges, golf training facilities or practice areas, except as an accessory to a golf course.

Governing body means the City Council.

Grade Plane means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.¹³

Height, Building means the vertical distance from grade plane to the average height of the highest roof surface.¹⁴

Home occupation means an activity conducted in a dwelling unit for gain, profit or financial support by persons living in the dwelling unit.

Hotel means a building containing more than two guest rooms which lodging is provided with or without meals for compensation, and which is open to transient guests, and where no provision is made for cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge during all times when any of the rooms are rented.

Institutional housing see *Facilities for Institutionalized Persons*

Junkyard means an area where discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled, or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and used building materials.

Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included. Such use shall not include organic waste or material.

Kennel, commercial means anyplace where four or more dogs over six months of age are boarded, bred, trained or offered for sale.

Kennel, private means anyplace where four or more dogs over six months of age are owned by any member or members of the household.

Land alteration means the excavation or grading of land involving movement of earth and materials in excess of 50 cubic yards.

¹⁵*Land reclamation and land grading* means changing the grade of the land by depositing, removing, or moving material. Depositing, removing, or moving a total of 50 cubic yards or more and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or moving materials in, out, or within the lot, shall constitute land reclamation and land grading.

Landscaping means planting of trees, shrubs and ground covers.

¹⁶*Lean-to* means a structural element on a building that is open on three sides and has a roof that is attached to and supported by the building on one side and by posts on the other side.

¹³ Ord 02-2011, 7/19/2011

¹⁴ Ord 02-2011, 7/19/2011

¹⁵ Ord 8-2005, 5/17/2005

¹⁶ Ord 05-2013, 3/19/2013

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Loading space means a space, accessible from a street, alley or way, in or outside of a building, for the use of trucks while loading and unloading merchandise or materials.

Lodging room means a room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms, without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room. (See Boardinghouse.)

Lot means a parcel of land designated by metes and bounds, registered land survey, plat or other means, and which description is either recorded in the office of the county recorder or registrar of titles or used by the county treasurer or county assessor to separate such parcel from other lands for tax purposes.

Lot area means the area of a horizontal plane within the lot lines.

Lot, buildable means a lot which meets or exceeds all requirements of the City Land Use and Development Ordinances without the necessity of variances.

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 single street, the interior angle of which does not exceed 135 degrees.

Lot depth means the horizontal distance between the frontage right-of-way line and rear lot line. On a corner lot, the side with the largest frontage is its depth, and the side with the lesser frontage is its width.

Lot line means the property line bounding a lot except when any portion of a lot extends into a public right-of-way or a proposed public right-of-way line of such public right-of-way shall be the lot line.

Lot line, front means that boundary of a lot which abuts an existing improved public right-of-way or an approved private road. In the case of a corner lot, it shall be the shortest dimension along a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner and filed with the Zoning Administrator. In the case of a corner lot in a nonresidential area, the lot shall be deemed to have frontage on both streets.

Lot line, rear means that boundary of a lot which is opposite the front lot line. If the rear lot 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 ten 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 which is not a front lot line or a rear lot line.

Lot of record means a platted lot or metes and bounds parcel which has been recorded in the office of the county register of deeds or registrar of titles prior to the adoption of the ordinance from which this article was derived.

Lot, through means any lot other than a corner lot which abuts more than one street. On a through lot, all the street lines shall be considered the front lines for applying this article.

Lot width means the horizontal distance between the side lot lines of a lot measured at the setback line.

¹⁷*Manufactured home* means a structure transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under M.S.A. § 327.32. *Manufactured home* excludes prefabricated homes and modular homes. No manufactured dwelling shall be moved in the City that does not meet the manufactured home building code as defined in M.S.A. § 327.32.

Manufacturing and industrial, light, includes the compounding, processing, packaging, treatment, or assembly of products and materials provided such use will not generate offensive odors, glare, smoke, dust, noise, vibrations, or other effects which would be damaging to the environment. Such uses include but are not limited to the following:

¹⁷ Ord 05-2013, 3/19/2013

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Lumberyards, machine shops, products assembly, sheet metal shops, non-retail food and beverages, printing, publishing, fabricated metal parts, appliances, clothing, textiles, medical or dental devices, wholesale greenhouse or nursery, truck terminals. No retail sales shall be permitted.

Manufacturing, heavy means all manufacturing, compounding, processing, packaging, treatment, or assembly of products and materials that may emit objectionable and offensive noise, odor or pollution beyond the lot on which the use is located. Such uses include but are not limited to the following: Sawmill, refineries, commercial feed lots, acid, cement, explosives, flour, feed and grain milling or storage, meat packing, slaughterhouses, coal or tar asphalt distillation, rendering of fat, grease, lard or tallow, alcoholic beverages, poisons, exterminating agents, glue or size, lime, gypsum, plaster of paris, tanneries, automobile parts, paper and paper products, glass, chemicals, crude oil and petroleum products including storage, electric power generation facilities, vinegar works, junkyard, auto reduction yard, foundry, forge, casting of metal products, rock, stone and cement products.

Manure means any solid or liquid containing animal excreta.

Marina means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as the sale, storage and repair of boats, fueling, sewage pumpout, boat launching, boat repair and boat storage; except that marina does not mean temporary docks associated with riparian residential development if the mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.

Mean flow level means the average flow elevation of a stream or river computed as the midpoint between extreme low and extreme high water.

Medical uses means those uses concerned with the diagnosis, treatment, and care of human beings. These include, hospitals, dental services, medical services or clinic, nursing or convalescent home, orphans' home, rest home, sanitarium.

Mezzanine shall be considered a portion of the story below and shall not exceed one-third of the floor area of that room or space in which they are located. A mezzanine shall be open and unobstructed to the room in which such mezzanine is located except for walls not more than 42 inches (1067 mm) high, columns and posts.¹⁸

Mining means the extraction of sand, gravel, rock, soil, or other material from the land and the removal thereof from the site. For the purposes of this article, mining shall not include: The removal of materials associated with the construction of a building, the removal of excess materials in accordance with approved plats or utility and highway construction, minor agricultural and conservation items, and sod removal, except as further regulated herein. (See the City mining ordinance, article X of this chapter.)

Mobile home means a single-family detached dwelling unit designed for year round occupancy, constructed at a factory or assembly plant and drawn to the site on a permanently attached undercarriage and wheels. "Mobile home" shall not include "trailer" as herein defined, nor shall it include manufactured homes which meet or exceed the requirements of the state manufactured home building code.

Mobile home lot means a parcel of land for the placement of a single mobile home for the exclusive use of the occupants of such mobile home.

Mobile home park means any site, lot, field, or tract of land under single ownership designed, maintained, or intended for the placement of two or more occupied mobile homes. "Mobile home park" shall include any building, structure, vehicle, or enclosure intended for use as part of the equipment of such mobile home park.

Motor courts or motel means a building or group of buildings, other than a hotel, used primarily as a temporary residence of a motorist.

Motor freight terminal means a building or area in which freight brought by motor truck is transferred and/or stored for movement by motor truck.

Municipality means the City of Afton.

¹⁸ Ord 02-2011, 7/19/2011

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Noise means one, or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasant and irritating to the ear.

Noise, ambient, means the all-encompassing noise associated with a given environment, being either a composite of sounds transmitted by any means from many sources near and far, or a single predominant source.

Nominal Parcel means a parcel not reduced by more than ten percent (10%) of its lot area due to right-of-way dedication or a perturbation in the rectangular survey system.

Nonconforming use means any lawful use of land or any lawful use of a building or structure existing on the effective date of the ordinance from which this article is derived, or any amendment thereto, which use does not conform with the regulations for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

Noxious matter means material which is capable of causing injury or is in any way harmful to living organisms or is capable of causing detrimental effect upon the health, the psychological, social or economic well being of human beings.

Nursery, day means a use where care is provided for three or more children under kindergarten age for periods of four hours or more per day for pay.

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. Such nursing home shall be licensed by the state board of health as provided for in M.S.A. § 144.50.

Office uses means those commercial activities that take place in office buildings, where goods are not produced, sold, or repaired. These include: banks, general offices, governmental office, insurance office, real estate office, travel agency or transportation ticket office, telephone exchange, utility office, radio broadcasting, and similar uses.

Official control means legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all of which control the physical development of the City, or any part thereof, or any detail thereof, and the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes, housing codes and official maps.

Old village means the area originally platted as the Village of Afton.

Open sales lot means land devoted to the display of goods for sale, rent, lease, or trade where such goods are not enclosed within a building.

Open storage means storage of any material outside of a building.

Other Specially Permitted Use means a land use or development allowed with appropriate conditions as determined by the Zoning Administrator and as specifically set forth in each article of this chapter.

Owner includes all persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.

Parking space means a suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size.

Performance standards means the minimum development standards as adopted by the City Council and on file in the office of the Zoning Administrator. Such standards shall also be filed with the City Clerk.

Person means an individual, political and corporate bodies, and partnerships and other unincorporated associations.

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Places of Worship 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.¹⁹

Planning Commission means the duly appointed planning and zoning commission of the City.

Principal structure or use means one which determines the predominant use as contrasted to accessory use or structure.

Private street means a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but which is owned by one or more private parties.

Property line means the legal boundaries of a parcel of property which may also coincide with a right-of-way line of a road, cartway, 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 and/or operated by a governmental unit including school districts.

Publication means an official notice as prescribed by state statute.

Race track means any area where two or more animals or power driven vehicles are raced for profit or pleasure.

Recreation equipment (in residential districts) means play apparatus such as swing sets and slides; sandboxes; poles for nets; unoccupied boats, recreational vehicles and trailers not exceeding 25 feet in length; picnic tables, lawn chairs, barbecue stands, and similar equipment or structures; but not including tree houses, swimming pools, playhouses exceeding 25 square feet of floor area, or sheds utilized for storage of equipment.

Recreation vehicle means any vehicle or structure designed and used for temporary, seasonal human living quarters which meets all of the following qualifications:

- A. Is not used as the permanent residence of the owner or occupant;
- B. Is used for temporary living quarters by the owner or occupant while engaged in recreation or vacation activities;
- C. Is towed or self-propelled on public streets or highways incidental to such recreation or vacation activities;
- D. Examples of such vehicles include van campers, tent camping trailers, self-contained travel trailers, pick-up campers, camping buses, and self-contained, self-propelled truck chassis mounted vehicles providing living accommodations.

Recreation vehicle parks means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the location or accommodations for any recreation vehicles as defined herein, and upon which such recreation vehicles are parked. The term "recreation vehicle park" shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the park and its facilities.

Reduction yard means a lot or yard where one or more unlicensed motor vehicles, or the remains thereof, are kept for the purpose of dismantling, wrecking, crushing, repairing, rebuilding, sale of parts, sale as scrap, storage, or abandonment. (See: Junkyard.)

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 or tracts of a Registered Land Survey Number. See M.S.A. § 508.47. A registered land survey shall not be used as a means to subdivide property.

Research means medical, chemical, electrical, metallurgical, or other similar research and quality control, conducted in accordance with the provisions of this article.

¹⁹ Ordinance 5-2005, 4/19/2005

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Residence, attached dwelling means a dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

Residence, detached dwelling means a dwelling which is entirely surrounded by open space on the same lot.

Residence, duplex means a residential building containing two dwelling units.

Residence, multiple dwelling means a residential building, or portion of a building, containing three or more dwelling units served by a common entrance.

Residence, single-family dwelling means a residential building containing one detached dwelling unit.

Residence, townhouse means a residential building containing two or more attached dwelling units, each unit so oriented as to have all exits directly to the outside.

Residential district. See Section 12-134 for permitted uses.

Resort means any structure or group of structures containing more than two dwelling units or separate living quarters designed or intended to serve as seasonal or temporary dwellings on a rental or lease basis for profit with the primary purpose of such structures being recreational in nature. Uses may include a grocery for guests only, fish cleaning house, marine service, boat landing and rental, recreational area and equipment, and similar uses normally associated with a resort operation.

Restaurant means any establishment having appropriate facilities for the serving of food to the general public.

Restrictive covenant. See Protective covenant.

Retail business uses means stores and shops selling personal services or goods for final consumption.

Riding stable means the training and riding of horses for private or public use on lots of 20 or more acres that require indoor riding structures of appropriate size. This may also include boarding of horses, training of horses and riders, and similar uses and activities.

Roadside sales stand means a structure used only for the display and sale of products with no space for customers within the structure, on a seasonal basis.

Safeguard means a facility or device or any disposal system or combination thereof designed to prevent the escape or movement of any manure, or solution thereof, or other waste such as uneaten food, without limitation, from the place of deposit or keeping thereof under such conditions that pollution of any waters of the state otherwise might result therefrom.

Sales, Seasonal Agricultural. A business selling agricultural goods of a temporary or seasonal nature. Such a business is limited to agricultural goods actually raised on land owned or leased by the business operator. Such sales activities are²⁰ limited to the following period: Saturdays from 7:00 a.m. to noon, from May 15th to November 1st. Such sales activities shall be located only in the VHS-C District on private property with permission of the landowner or upon public property with the permission of the City, or both.²¹

Scenic easement means an interest in land, less than fee title, that limits the use of the land for the purpose of protecting the scenic, recreational and natural characteristics. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: Perpetually held for the benefit of the public; binding on the holder of the servient estate, his heirs, successors or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

²⁰ Amendment 02-2009, 4/21/2009

²¹ Ord 1997-12, 8/18/98

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Screening means and includes earth mounds, berms or ground forms; fences and walls; landscaping (plant materials) or landscaped fixtures, such as timbers; used in combination or singularly, so as to block direct visual access to an object throughout the year. In article IV of this chapter, screening does not include fences and walls.

Setback means the minimum horizontal distance between a structure, sewage treatment system, or other facility and a street right-of-way, ordinary high water level mark, sewage treatment system, bluffline, road, highway, property line or other facility.

Shelter, fallout or blast means a structure or portion of a structure intended to provide protection to human life during periods of danger from nuclear fallout, blasts, air raids, storms, or other emergencies.

Shopping center means any grouping of two or more principal retail uses whether on a single lot or on abutting lots under multiple or single ownership.

Sign means a notice which directs attention to a product, place, activity, person, institution, organization, or business for public view.²²

Slope means rise or fall in land surface, expressed as the ratio h:v in which 'h' is horizontal distance and 'v' is vertical rise or fall of the land surface. Equivalently, slope may be expressed as a percentage, calculated to be 100 times 'v' divided by 'h'.²³

Story means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A basement shall be counted as a story. A mezzanine shall not be counted as a story.²⁴

Story Above Grade means any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet (1829 mm) above grade plane.
2. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter.
3. More than 12 feet (3658 mm) above the finished ground level at any point.²⁵

Storage site means any tract or parcel of land, including any constructed storage platform, tank, or other artificial or natural area or containment facility where manure is stored or kept and which is so located that the escape or movement of the manure or a solution thereof from the storage site into the underlying ground might result in pollution of any waters.

Street means a public right-of-way which affords a primary means of access to abutting property, and shall also include avenue, highway, road, or way.

Street, collector means a street which serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major road.

Street, intermediate or minor arterial 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, local means a street intended to serve primarily as an access to abutting properties.

Street pavement means the wearing of exposed surface of the roadway, used by vehicular traffic.

Street width means the width of the 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.

²² Repealed Ord 02-2008; Ord 01-2014, 5/20/2014

²³ Ord 02-2011, 7/19/2011

²⁴ Ord 02-2011, 7/19/2011

²⁵ Ord 02-2011, 7/19/2011

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Structure means anything constructed or erected on the ground, or attached to something having a location on the ground.

Subdivision means the division of a parcel of land into two or more lots or parcels, for the purpose of transfer of ownership or building development. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Substandard building, structure or lot means any building, structure or lot lawfully existing on the effective date of the ordinance from which this article is derived or any amendment thereto which building, structure or lot does not conform with the regulations, including dimensional standards, for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

Supper club means a building with facilities for the preparation and serving of meals and where meals are regularly served at tables to the general public. The building must be of sufficient size and design to permit the serving of meals to not less than 50 guests at one time. Intoxicating liquors may be sold on-sale and live entertainment and/or dancing shall be permitted.

Tavern or bar means a building with facilities for the serving of 3.2 beer, wine, set-ups and short order foods.

Trailer means any vehicle or structure designed and used for human living quarters which meets all of the following qualifications:

1. Is not used as the residence of the owner or occupant;
2. Is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities;
3. Is towed or otherwise transported, by its own or by other motive power, on the public streets or highways incidental to such recreational or vacation activities.
4. The term "trailer" shall not include "mobile home." The term "trailer" shall include, but not be limited to campers, camper tents, house trailers, camping trailers, travel trailers, tent trailers, pick-up campers, camping buses, and any other self-propelled vehicle constructed to provide living accommodations.

Trailer park means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the temporary location or accommodations for any trailers, as defined herein, and upon which such trailers are parked. The term "trailer park" shall include all buildings used or intended for use as part of the equipment thereof whether or not a charge is made for the use of the park and its facilities.

Transportation terminal means truck, taxi, air, train, bus, and mass transit terminal and storage area, including minor freight (solid and liquid) terminal, but only if accessory to a principal use permitted in industrial zoning districts.

Truck stop means a motor fuel station devoted principally to the needs of tractor trailer units and trucks and which may include eating and/or sleeping facilities.

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, nonconforming means use of land, buildings, or structures legally existing at the time of adoption of the ordinance from which this article was derived that does not comply with all the regulations of this article or any amendments hereto governing the zoning district in which such use is located. See Section 12-57.

Use, open means the use of a lot without a building or including a building incidental to the open use.

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, conditional, or special.

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Variance means a modification or variation of the strict provisions of this article as applied to a specific piece of property in order to provide relief for a property owner because of practical difficulties imposed upon the property by this article. A variance shall normally be limited to height, bulk, density and yard requirements. A modification in the allowable uses within a district shall not be considered a variance. (See Section 12-77)

Vehicle repair means general repair, rebuilding or reconditioning of engines, motor vehicles or trailers, including body work, framework, welding, and major painting services.

Veterinary means those uses concerned with the diagnosis, treatment, and medical care of animals, including animal or pet hospitals.

Warehousing means the storage of materials or equipment within an enclosed building as a principal use, including packing and crating.

Waterfront uses, residential means boat docks and storage, fish house, fish cleaning, water recreation equipment, and other uses normally incidental to a lakeshore residence provided such uses are for the exclusive use of the occupants and nonpaying guests.

Wetlands means those lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland has one or more of the following attributes:

At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in the National List of Plant Species that Occur in Wetlands: North Central (Region 3), Fish and Wildlife Service, May, 1988, or later revisions.

The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in Hydric Soils in the United States, Soil Conservation Service, October, 1985, or later revisions.

Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands in this City are identified in the Afton Water Resources Inventory, Washington County Soil and Water Conservation District, January 1983, or later revisions.

Wholesaling means the selling of goods, equipment, and materials by bulk to another business that in turn sells to the final customer.

Yard means the open space on an occupied lot which is not covered by any structure.

Yard, depth of rear yard means the horizontal distance between the rear building line and the rear lot line.

Yard, front means a yard extending across the front of the lot between the inner side yard lines and lying between the front line of the lot and the nearest line of the building.

Yard, rear means a yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

Yard, required means a yard area which may not be built on or covered by structures because of the dimensional setbacks for such structures within the zoning district.

Yard, side means a yard between the side lines of the lot and the nearest building line.

Zoning district or district means an area or areas within the City in which the regulations and requirements of this article are uniform.

Sec. 12-56. Application of article.²⁶

- A. *Application generally.* Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building or structure, or part thereof, shall be occupied or used unless in conformity with regulations specified in this article for the district in which it is located.
- B. *Application to existing structures.* This article shall not apply to existing buildings and structures, nor to the existing use of any building, structure, or land to the extent of such use on the effective date of the ordinance from which this article was derived. However, this article shall apply to any change in use, alteration, extension or movement of a building or structure, and to any change in the use of land subsequent to the effective date of the ordinance from which this article was derived.
- C. *"Use" defined.* For the purpose of this section, the word "use" shall mean:
 - 1. Any purpose for which a building or structure or a tract of land may be designed, arranged, intended, maintained or occupied; or
 - 2. Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure, or on a tract of land.
- D. *Interpretation and application.* In their interpretation and application, the provisions of this article shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.
- E. *Conditions.* Where the conditions imposed by any provision of this article are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are most restrictive or which impose higher standards or requirements shall prevail.

Sec. 12-57. Nonconforming uses, buildings and structures.

- A. *Preservation of nonconforming uses.* Except as hereinafter provided in this section, the lawful use of land or the lawful use of a building or structure existing on the effective date of the ordinance from which this article was derived or on the effective date of any amendment thereto may be continued although such use does not conform to the provisions of this article.
- B. *Notice of nonconforming use.* All nonconforming uses shall be issued a notice of nonconforming use by the Zoning Administrator. The notice shall state the reason why the use is nonconforming, the property address and legal description of the use, and a description of the use as it existed on the effective date of the ordinance from which this article was derived including, but not limited to, the following: Type of business or activity; seating capacity; parking facilities; size of structure; and any other regulation in this article that affects the use. The notice shall be recorded at the county recorder's office. Failure by the Zoning Administrator to issue a notice shall not legitimize a nonconforming use. When a nonconforming use becomes less nonconforming, a new notice shall be issued and recorded as described above. No extension, enlargement or intensification of, or change in, a nonconforming use other than described in the notice shall be permitted, except that any nonconforming use may change to a conforming use.
- C. *Preservation, alteration or improvement of substandard buildings or structures.* Except as hereinafter provided in this section, buildings or structures lawfully existing on the effective date of the ordinance from which this article was derived or on the effective date of any amendment hereto may be maintained although such building or structure does not conform to the dimensional standards of this article, but any such building or structure shall not be altered or improved beyond normal maintenance as determine by the ZA unless it meets the requirements of Section 12-57.
- D. *Exceptions to setback standards for substandard structures.* An extension, enlargement or alteration of a structure may be permitted by Administrative Permit if the structure does not meet the minimum setback requirements of this article, provided:

²⁶ Code 1982, § 301.401

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1. The structure involved is the principal structure;²⁷
 2. The structure was built prior to September 18, 1975;
 3. The existing setback of the structure is within 60 percent of the current minimum required setback;
 4. The proposed improvement to the structure is on the side of the structure opposite from the substandard setback, or the improvement is extended laterally or parallel with the substandard setback;
 5. The proposed improvement will not encroach farther into the substandard setback than does the structure; and
 6. The proposed improvement will be in compliance with all other requirements and dimensional standards of this article.
- E. *Unlawful uses, buildings and structures.* No unlawful use of property existing on the effective date of the ordinance from which this article was derived or any amendment thereto nor any building or structure which is unlawfully existing on such date shall be deemed a nonconforming use or a nonconforming building or structure.
- F. *Permit holders and permit applicants.* Any nonconforming structure that is ready for or under construction on the effective date of the ordinance from which this article was derived or any amendment thereto may be completed and occupied in accordance with the requirements of any valid building permit issued therefore²⁸ prior to such effective date.
- G. *Change of a nonconforming use.*
1. *Change from one nonconforming use to another.* A nonconforming use may be changed only to a use permitted in the district in which it is located; except that if the original use has ceased to be in use for less than one year, a building may be changed to another nonconforming use of the same or a more restrictive classification, provided such change is approved by the Board of Adjustment and appeals as hereinafter provided. Any alterations made to the building to make the change in nonconforming use possible must be reviewed and approved in conjunction with the approval of the changed nonconforming use. Once changed to a conforming use, no building or land shall be permitted to revert to the original nonconforming use.
 2. *Change of use with approval of the Board of Adjustment.* A nonconforming use, all or partially conducted in a building or buildings, may be changed to another nonconforming use only upon determination by the Board of Adjustment, after a public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace. In determining relative detriment, the Board of Adjustment shall take into consideration, among other things: Traffic generated; nuisance characteristics, such as emission of noise, dust and smoke; fire hazards; and hours and manners of operation.
- H. *Restoration of nonconforming uses or substandard structures or buildings.* A substandard building or structure which is damaged or destroyed by fire, flood, wind, earthquake or other calamity may be restored and the occupancy, use or nonconforming use of such building or structure, or part thereof, which existed at the time of such partial destruction, may be continued or resumed, provided that the restoration is started within a period of one year and is diligently pursued to completion, unless the damage to such building or structure is equal to 50 percent or more of the current assessed market value according to the City Assessor, in which case the reconstruction of the building or structure and the restoration of the use shall conform to the provisions of this article.
- I. *Abandonment of use.* When any nonconforming use of land or of a building or structure is abandoned for a period in excess of one year, such land, building or structure shall, thereafter, be used only as provided by this article.²⁹
- J. *Exceptions to slope requirements for substandard structures.* An extension, enlargement or iteration of a structure may be permitted by Administrative Permit if the structure is located on a slope in excess of 18% provided:

²⁷ Ord 1997-25, 8/17/99

²⁸ Amendment 02-2009, 4/21/2009

²⁹ Code 1982, § 301.402

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1. The structure involved is a principal residential dwelling unit;
2. The structure was built prior to September 18, 1975;
3. Soils on the land will support the extension, enlargement or alternation without significant risk of erosion or damage to structure thereafter construction;
4. All structures, including the extension, enlargement or alteration are set back at least 40 feet from the crest of the 18% slope;
5. No more than 50 cubic yards of soil shall be graded and the development will not damage heavily wooded areas of other significant features;
6. Erosion control methods are utilized both during and after construction , as recommended by the Washington Soil and Water conservation District;
7. Applicant must demonstrate that a conforming sewage treatment system is present, pursuant to Article IX of this chapter; and
8. The proposed improvement will be in compliance with all other requirements and dimensional standards of this article.

Sec. 12-58. Interpretation of conflicting provisions.³⁰

If conflicting or multiple provisions regarding the same subject matter are found in this article, the more specific or restrictive provision shall apply. The Zoning Administrator shall rule on which provision is more specific or restrictive and appeals from such decisions may be made in the manner provided in this article.

Sec. 12-59. Enforcement.³¹

- A. *Violations.* The violation of any provision of this article or the violation of the conditions or provisions of any permit issued pursuant to this article shall be a misdemeanor and upon conviction thereof the violator shall be subject to punishment in accordance with Section 1-13. Unless otherwise provided, each act of violation and every day on which such violation occurs or continues constitutes a separate offense.
- B. *Application to City Personnel.* The failure of any officer or employee of the City to perform any official duty shall not subject the officer or employee to personal liability for such failure unless such liability is specifically provided for by law.
- C. *Equitable remedies.* Upon a violation or the threatened violation of any provision of this article or any provision or condition of a permit issued pursuant to this article, the City in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violation or threatened violation.
- D. *Mandamus proceedings.* Any taxpayer of the City may institute mandamus proceedings in district court to compel specific performance by the proper official or officials of any duty required by this article.

Sec. 12-60. Supremacy.³²

When any condition imposed by any provision of this article 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 city ordinance or regulation, or statute or law in effect in the City, the more restrictive condition shall prevail.

Secs. 12-61 – 12-75. Reserved.

DIVISION 2. ADMINISTRATION³³

Sec. 12-76. Duties of the Zoning Administrator.³⁴

³⁰ Code 1982, § 301.203

³¹ Code 1982, § 301.800

³² Code 1982, § 301.901

³³ **Cross reference** – Administration, Ch. 2.

³⁴ Code 1982, § 301.502, Ord 97-42, 9/18/01

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The Zoning Administrator shall enforce the provisions of this article as provided herein. In addition to the duties and powers of the Zoning Administrator under this article, express or implied, he shall have the duty and power to:

- A. Issue permits required by this article;
- B. Conduct inspections of land, buildings, or structures at reasonable times, to determine compliance with and enforce the provisions of this article;
- C. Maintain all records necessary for the enforcement of this article, including, but not limited to all maps, amendments, and Conditional Use Permits, variances, appeal notices and applications therefore³⁵;
- D. Receive, file and forward all appeals, notices, applications for variances, Conditional Use Permits or other matters to the appropriate officials or boards;
- E. Institute in the name of the City, any appropriate actions or proceedings to enforce this article.

<i>Action</i>	<i>When Applicable</i>	<i>Property Owner Should Apply To</i>	<i>Application Approved or Denied By</i>	<i>Appeal Considered By</i>	<i>Public Hearing Required</i>	<i>Reference</i>
Tree or vegetative cutting permit	See Lower St. Croix River Bluffland & Shoreland Management Ordinance, Article IV of this Chapter	Zoning Administrator	Zoning Administrator	Court	No	Lower St. Croix River Bluffland & Shoreland Management Ordinance, article IV of this chapter
Driveway Permit	Prior to application for building permit	Zoning Administrator	Zoning Administrator	Court	No	12-84
Septic Permit	Prior to application for driveway permit and building permit	Building Official	Building Official	Court	No	Sanitary Sewer Ordinance, Article IX of this chapter
³⁶ Land Reclamation and Land Grading	Moving 50 cubic yards or more of materials and/or disturbance of 1,000 s.f. or more of land per lot	Zoning Administrator	Zoning Administrator	Court	No	12-85, 12-215, 12-216
Moving Permit	Relocating a structure	Zoning Administrator	City Administrator	Court	No	12-82
Sign permit	Erection of a sign ³⁷	Zoning Administrator	See 12-210	Court	Option of City Council	12-210
Administrative Permit	Ensure compliance with more unusual uses or zoning requirements	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-79
Conditional Use Permit	May allow for uses not normally permitted in a specific zoning district	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-78

³⁵ Amendment 02-2009, 4/21/2009

³⁶ Ord 08-2005, 5/17/2005

³⁷ Ord 01-2014, 5/20/2014

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<i>Action</i>	<i>When Applicable</i>	<i>Property Owner Should Apply To</i>	<i>Application Approved or Denied By</i>	<i>Appeal Considered By</i>	<i>Public Hearing Required</i>	<i>Reference</i>
Variance	Difficulties with dimensional provisions of zoning ordinance	Zoning Administrator	Review and recommendation by Planning Commission; approval by Board of Adjustment and appeals	Court	Yes	12-77
Building permits	Any proposed construction	Building Official	Building Official or inspector	Court	No	Building code
Zoning Ordinance Amendment	Petition of property owner or initiative of Planning Commission or City Council	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	12-80
Certificate of occupancy	Certifies building or structure meets current codes and can be occupied	Building Official (issued upon completion of structure)	Building Official and Zoning Administrator	Court	No	12-87
Subdivision	Creating new lots	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	Subdivision Ordinance, article VI of this chapter and 12-131
Tree or vegetative cutting permit	See Lower St. Croix River Bluffland & Shoreland Management Ordinance, Article IV of this Chapter	Zoning Administration	Zoning Administrator	Court	No	Lower St. Croix River Bluffland & Shoreland Management Ordinance, article IV of this chapter
Driveway Permit	Prior to application for building permit	Zoning Administrator	Zoning Administrator	Court	No	12-84
Septic Permit	Prior to application for driveway permit and building permit	Building Official	Building Official	Court	No	Sanitary Sewer Disposal Ordinance, Article IX of this chapter
³⁸ Land Reclamation and Land Grading	Moving 50 cubic yards or more of materials and/or disturbance of 1,000 s.f. or more of land per lot	Zoning Administrator	Zoning Administrator	Court	No	12-85, 12-215, 12-216
Moving Permit	Relocating a structure	Zoning Administrator	City Administrator	Court	No	12-82
Sign permit	Erection of any sign	Zoning Administrator	See 12-210	Court	Option of City Council	12-210
Administrative Permit	Ensure compliance with more unusual uses or zoning requirements	Zoning Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	No	12-79

³⁸ Ord 8-2005, 5/17/2005

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<i>Action</i>	<i>When Applicable</i>	<i>Property Owner Should Apply To</i>	<i>Application Approved or Denied By</i>	<i>Appeal Considered By</i>	<i>Public Hearing Required</i>	<i>Reference</i>
Conditional Use Permit	May allow for uses not normally permitted in a specific zoning district	Zoning Administrator	Review and recommendation by Planning Commission, final approval by City Council	Court	No	12-78
Variance	Difficulties with dimensional provisions of zoning ordinance	Zoning Administrator	Review and recommendation by Planning Commission; approval by Board of Adjustment and appeals	Court	Yes	12-77
Building permits	Any proposed construction	Building Official	Building Official or inspector	Court	No	Building code
Amendment of zoning ordinance	Petition of property owner or initiative of Planning Commission or City Council	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	12-80
Certificate of occupancy	Certifies building or structure meets current codes and can be occupied	Building Official (issued upon completion of structure)	Building Official and Zoning Administrator	Court	No	12-87
Subdivision	Creating new lots	City Administrator	Review and recommendation by Planning Commission; final approval by City Council	Court	Yes	Subdivision Ordinance, article VI of this chapter and 12-131

*Fees are established from time to time by resolution of the City Council, see Section 12-88.³⁹

Sec. 12-77. Appeals and variances; Board of Adjustments and Appeals.

- A. Appeals to the Board of Adjustments and Appeals may be taken by any affected person upon compliance with any reasonable conditions imposed by the Zoning Ordinance. The Board of Adjustments and Appeals has the following powers with respect to the Zoning Ordinance:
1. To hear and decide appeals where it is alleged that there is an error in any order, requirement decision, or determination made by an administrative officer in the enforcement of the Zoning Ordinance.
 2. To hear requests for variances from the literal provisions of the ordinances in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration and to grant such variances only when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan. "Practical difficulties" as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.
 - a. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
 - b. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
 - c. Essential Character: The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone shall not constitute practical difficulties if reasonable use for the property exists under the terms of the ordinance. Practical difficulties also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

³⁹ Res. No. 1997-16, § 10, 6-17-97

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The Board of Adjustments and Appeals may not permit as a variance any use that is not permitted under the ordinance for property in the zone where the affected person's land is located. Variances shall be granted for earth sheltered construction as defined in Section 216C.06, Subdivision 2, Minnesota Statutes, when in harmony with the Ordinance.

The Board may impose conditions in the granting of variances to insure compliance and to protect adjacent properties. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

- B. *Composition.* The City Council shall serve as the Board of Adjustments and Appeals. Any question of whether a particular Board member should be disqualified from voting upon an issue shall be determined by a majority vote of all members, except the member who is being challenged.
- C. *Appeals.* An appeal from any order, requirement, decision or determination of any administrative official may be initiated by any person affected thereby, or by any officer, department, board or bureau of the City, County or State within 30 days from the date of any such order, requirement, decision or determination by filing with the Zoning Administrator a written notice of appeal.
1. The notice of appeal shall state:
 - a. The particular order, requirement, decision or determination from which the appeal is taken;
 - b. The name and address of the appellant;
 - c. The grounds for the appeal;
 - d. The relief requested by the appellant.
 2. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustments and Appeals, to whom the appeal is taken certifies that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.
 3. The Board of Adjustments and Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that extent shall have all the powers of the officer from whom the appeal was taken, and may direct the issuance of a permit.
- D. *Variances.* Application for a variance shall be filed with the Zoning Administrator. The application shall be accompanied by development plans for the proposed use showing such information as may be reasonably required by the administrator, including but not limited to those items listed below. Such plans shall contain sufficient information for the City to determine whether the proposed development will meet all applicable development standards.
1. Name and mailing address of the applicant;
 2. The legal property description of the land involved in the request, including the street address, if any, of the property;
 3. The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
 4. Site plan drawn to scale, dimensions indicated, including: Proposed structure, house, existing accessory buildings, well, septic system (tank and drainfield), adjacent public streets, driveway, lot size, and lot dimensions:
 - a. Distance between existing structures, proposed structures, well and septic system.
 - b. Setbacks of existing and proposed structures from: Lot lines, non-buildable easements, public street right-of-way line or centerline, shoreline, bluffline or crest of slope 18 percent or steeper.
 - c. Possible location of any and all detached accessory buildings permitted by this article for the property for which the application is being made.
 5. Landscaping and screening plans including species and size of trees and shrubs proposed;
 6. Finished grading and drainage plans sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 7. Type of business or activity and proposed number of employees or occupants;
 8. Proposed floor plan and elevations of all buildings with the use indicated;
 9. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 10. A location map showing the parcel's general location within the City;
 11. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an

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attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;

12. An accurate list showing the names and mailing addresses of the record owners of all property located within 500 feet of the property owned by the applicant.
13. A complete description of the request for variance including a description of the unique conditions and practical difficulties that make a Variance necessary, the Sections of the City Code from which a Variance is requested, and the reasons for the Variance request.⁴⁰

The Board of Adjustments and Appeals may impose conditions in the granting of a variance which the board may reasonably determine to be necessary to protect the adjacent properties, preserve the public health, safety and welfare, and comply with the intent and purposes of this article and with the comprehensive plan. The Board of Adjustment and appeals may also impose such conditions and requirements as are necessary to insure compliance with the terms of the variance.

- E. *Hearing procedure.* The Zoning Administrator shall, upon the filing of a notice of appeal or an application for a variance, refer the matter to the Board of Adjustments and Appeals and the Planning Commission and establish a time for the hearing thereof by said board and commission no less than 15 days after the filing of the notice or application and no more than 45 days after the filing thereof. On variance applications, the Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give no less than ten days' nor more than 30 days' notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a description of the land and the requested variance. At least ten days before the hearing, the Zoning Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question. The Planning Commission shall review all requests for variances prior to final action by the board; a recommendation may be made to the board for approval, denial or approval with conditions deemed to be in the public interest. The Board of Adjustment and appeals shall decide any appeal or any application for a variance and issue its order with respect thereto within 30 days from the date of the hearing thereon.
- F. *Findings of the Board.* The Board of Adjustments and Appeals shall make written findings in any case of an appeal or application for a Variance and shall state therein the reasons for its decision.
 1. In addition to meeting the criteria set forth in Section 12-77 (A), the following criteria must be met before a Variance may be granted:
 - a. The Variance, if granted, will not have a significant adverse effect on the public health, safety, welfare or environment.
 - b. The granting of the Variance requested will not confer on the applicant any special privilege that is denied by the Ordinance to owners of other land, structures or buildings in the same district.
 - c. Exceptional or extraordinary circumstances apply to the property which does not apply generally to other properties in the same zoning district or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of the property have had no control.
 - d. The literal interpretation of the provisions of this Ordinance would deprive the applicant of the rights commonly enjoyed by other property in the same district under the terms of this Ordinance.
 - e. The Variance requested is the minimum Variance that would alleviate the practical difficulty.⁴¹
 2. The order issued by the Board of Adjustments and Appeals shall include the legal description of the land involved. Any such order shall be filed with the Zoning Administrator who shall immediately mail a copy thereof, bearing the notation of the filing date, to the appellant or applicant.
 - a. A certified copy of any order issued by the Board of Adjustments and Appeals acting upon any appeal from an order, requirement, decision or determination of an administrative officer, or upon any application for a Variance, shall be filed with the County Recorder.
 - b. Such filing shall be made by the Zoning Administrator or other agent designated by the Board as soon as is reasonably possible after the filing of the order with the Zoning Administrator.
 - c. The cost of such filing with the County Recorder shall be borne by the appellant or applicant.

⁴⁰ Ord 1997-10, 5/19/1998; Ord 02-2014, 5/20/2014

⁴¹ Ord 02-2014, 5/20/2014

- G. *Finality of decision.* All decisions of the Board of Adjustment and appeals acting upon an appeal from an order, requirement, decision or determination by an administrative officer or upon an application for a variance shall be final except that any aggrieved person may have any decision or order of the board reviewed by an appropriate remedy in district court as provided by law.
- H. *Time limit for implementing a variance.* A variance must be implemented within one year from the date the variance was issued. Any variance not implemented within one year from the date of issuance must be reapplied for and is subject to any amendment to this article and any new conditions the Board of Adjustment and appeals deems necessary to insure compliance with the terms of the variance.
- I. Variances to Impervious Coverage in VHS-C and VHS-R Districts
 - 1. Based on the findings listed below, the City of Afton has determined that a variance to exceed 20 percent impervious surface as required per the Department of Natural Resources⁴² Lower St. Croix River Bluffland and Shoreland District is acceptable in the VHS-C and VHS-R Districts subject to meeting the requirements of Section 12-132 (B) (12) of the Afton Code of Ordinances, including the review and comment of the Department of Natural Resources.
 - a. The properties in the VHS-C and VHS-R districts are constrained in lot size.
 - b. A precedent has been set that a maximum of 20 percent impervious coverage prohibits reasonable use within the district.
 - c. The conditions of Section 12-132 (B)(12) allow for adequate review and improved protection from erosion concerns, groundwater contamination, and surface water discharge.
 - d. The City of Afton is required to adhere to and enforce the Lower St. Croix River Bluffland and Shoreland regulations.⁴³

Sec. 12-78. Conditional Use Permits.⁴⁴

- A. *Purpose.* The purpose of a conditional use permit is to provide the City of Afton with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety. In making this determination, whether or not the conditional use is to be allowed, the City may consider the nature of the adjoining land or buildings, the effect upon traffic into and from the premises or on any adjoining roads, and all other factors the City shall deem a prerequisite of consideration in determining the effect of the general welfare, public health and safety. Conditional Use permits may be granted in accordance with this subdivision for any use or purpose listed as a conditional use for the zoning districts per Section 12-134 of the Zoning Ordinance.
- B. *Application.* Requests for conditional use permits, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a deposit and fee per the City's current fee schedule. The application shall also include development plans for the proposed use showing such information as may be reasonably required by the administrator, including but not limited to those things below.
 - 1. Name and mailing address of the applicant;
 - 2. The legal property description of the land involved in the request, including the street address, if any, of the property;
 - 3. The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
 - 4. Site plan drawn to scale, dimensions indicated, including: proposed structure, house, existing accessory buildings, well, septic system (tank and drainfield), adjacent public streets, driveway, lot size and lot dimensions:
 - a. Distance between existing structures, proposed structures, well and septic system.
 - b. Setbacks of existing and proposed structures from: Lot lines, non-buildable easements, public street right-of-way line or centerline, shoreland, bluffline or crest of slope 18 percent or steeper.
 - c. Possible location of any and all detached accessory buildings permitted by this article for the property for which the application is being made.
 - 5. Landscaping and screening plans including species and size of trees and shrubs proposed;

⁴² Ord 02-2009, 4/21/2009

⁴³ Ord 2004-17, 12/21/2004

⁴⁴ Ord 2004-16, 12/21/2004

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6. Finished grading and drainage plans sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 7. Type of business or activity and proposed number of employees or occupants;
 8. Proposed floor plan and elevations of all buildings with use indicated;
 9. Photometric lighting plan;
 10. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 11. A location map showing the parcels general location within the City;
 12. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 13. An accurate list showing the names and mailing addresses of the recorded owner of all property within a minimum of 500 feet of the boundaries of the property for which the application is submitted, the accuracy of which is verified by the applicant.
- C. *Staff review/Technical Procedure Reports.* Upon receipt of an application for a conditional use permit, the Zoning Administrator shall refer the request to appropriate staff to ensure that informational requirements are complied with. When all informational requirements have been complied with, the request shall be considered officially submitted. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports and/or provide general assistance in preparing a recommendation on the request to the Planning Commission and City Council.
- D. *Public Hearing.* Upon official submission of the request, the Zoning Administrator shall set a public hearing on the request for the next regularly scheduled Planning Commission meeting occurring at least ten (10) working days from such date as a notice of the hearing is published in the official newspaper. Such notice shall contain a legal property description and description of the request, and shall be published no more than thirty (30) days and no less than ten (10) days prior to the hearing. Written notification of the hearing shall also be mailed at least ten (10) working days prior to the date of the hearing to all owners of land within five hundred (500) feet of the boundary of the property in question. Failure of the property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance.
- E. *Planning Commission Action.* The Planning Commission shall conduct the public hearing at which time the applicant or a representative thereof shall appear to answer questions concerning the proposed request.
1. The Planning Commission shall consider possible⁴⁵ adverse effects of the proposed conditional use permit. Its judgment shall be based upon (but not limited to) the following factors:
 - a. The proposed action has been considered in relation to the specific policies and provision of and has been found to be consistent with the official City Comprehensive Plan; and
 - b. The proposed use is or will be compatible with present and future land uses of the surrounding area; and
 - c. The proposed use will not seriously depreciate surrounding property values or scenic views; and
 - d. The proposed use conforms with all performance standards contained herein.
 2. The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relations to all pertinent sections of the Ordinance.
 3. The Planning Commission shall make a recommendation for either denial or approval with conditions as they deem necessary to carry out the intent and purpose of this Ordinance. Such recommendation shall be in writing and accompanied by any report and recommendation of the City staff. The written recommendation of the Planning Commission shall be forwarded to the Zoning Administrator for referral to the City Council.
- F. *Referral to City Council.* Upon receipt of the Planning Commission report and recommendation, or within sixty (60) days of receipt of a complete application, unless the review period of the application is extended pursuant to Minnesota Statutes 15.99, the Zoning Administrator shall place the request and any report and recommendation on the agenda of the next regularly scheduled meeting of the City Council

⁴⁵ Ord 02-2009, 4/21/2009

G. *City Council Action.* Upon receiving the request and any report and recommendation of the Planning Commission and the City Staff, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact.

1. Approval of a proposed conditional use permit shall require passage by a majority vote of all members of the City Council.
2. In the case of a conditional use permit, the City Council may impose any condition it considers necessary to protect the public health, safety, and welfare.
3. A certified copy of any conditional use permit issued by the City Council shall be filed with the county recorder. Such filing shall be made by the Zoning Administrator or other agent designated by the City Council as soon as is reasonably possible after the filing of the conditional use permit with the Zoning Administrator. The cost of such filing with the County Recorder shall be borne by the applicant.
4. Whenever an application for a conditional use permit has been considered and denied by the City Council, a similar application for the conditional use permit affecting the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial, unless a decision to reconsider such matter is made by not less than a majority vote of the full City Council.

H. *Performance Bond.*

1. Except in the case of a non-income producing residential property, upon approval of a conditional use permit the City shall be provided with a surety bond, cash escrow, certificate of deposit, securities, or cash deposit prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the conditional use permit and the ordinances of the City.
2. The security shall be in the amount of 125 percent of the total cost of the site improvements to be installed by the applicant pursuant to the conditional use permit.
3. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the conditional use permit and ordinances of the City has been issued by the City Building Official.
4. Failure to comply with the conditional use permit or the ordinances of the City shall result in forfeiture of the security.

I. *Conditional Use Permit Amendments.* Any change involving structural alteration, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued shall require an amended conditional use permit and shall procedures shall apply as if a new permit where being issues. An amended conditional use permit application and requests for changes in conditions shall be administered in a manner similar to that required for a conditional use permit.

J. *Revocation.* If an approved conditional use permit is in violation of this Ordinance or the conditions of permit approval, the City may initiate a process to revoke the conditional use permit. The City shall then conduct a public hearing to consider the revocation of a conditional use permit. The public hearing shall be conducted by the Planning Commission, which shall make a recommendation to the City Council. In considering revocation, the Planning Commission and the City Council shall consider compliance with the approved conditions of the conditional use permit and the standards listed in Section 12-78 (E) of the Afton Code of Ordinance.

Sec. 12-79. Administrative Permit⁴⁶

- A. *Purpose.* The purpose of this section is to establish regulations and procedures for the processing and consideration of activities allowed by administrative permit, and of matter requiring the approvals of the Zoning Administrator with the goal of protecting the health, safety, and welfare of the citizens of the City.
- B. *Application.* Requests for administrative permits, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a deposit and fee per the City's current fee schedule. The application shall also include the information required below,

⁴⁶ Ord 2004-16, 12/21/2004

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however, the Zoning Administrator may waive submission information not deemed necessary for the administrative review.

1. Name and mailing address of the applicant;
 2. The legal property description of the land involved in the request, including the street address, if any, of the property;
 3. The names and mailing addresses of the owners of the property and any other persons having a legal interest therein;
 4. Site plan drawn to scale, dimensions indicated, including: proposed structure, house, existing accessory buildings, well, septic system (tank and drainfield), adjacent public streets, driveway, location of existing and proposed utility lines, lot size and lot dimensions:
 - a. Distance between existing structures, proposed structures, well, and septic system.
 - b. Setbacks of existing and proposed structures from: Lot lines, non-buildable easements, public street right-of-way line or centerline, shoreline, bluffline or crest of slope 18 percent or steeper.
 - c. Possible location of any and all detached accessory buildings permitted by this article for the property for which the application is being made.
 5. Landscaping and screening plans including species and size of trees and shrubs proposed;
 6. Finished grading and drainage plans sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 7. Type of business or activity and proposed number of employees or occupants;
 8. Proposed floor plan and elevations of all buildings with use indicated;
 9. Photometric lighting plan;
 10. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practices to be used to overcome any soil limitation shall be made part of the application;
 11. A location map showing the parcel's general location within the City;
 12. Proof of ownership of the property for which the application is submitted, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership.
 13. An accurate list showing the names and mailing addresses of the recorded owner of all property within a minimum of 500 feet of the boundaries of the property for which the application is submitted, the accuracy of which is verified by the applicant.
- C. *Administrative Action.* The Zoning Administrator shall make a determination on approval or denial of the administrative permit within sixty (60) days from the date of submission of a complete application unless the review is extended as allowed by Minnesota Statutes 15.99.
- D. *Review Criteria.* The Zoning Administrator shall consider possible adverse effects of the proposed administrative permit. Its decision shall be based upon (but not limited to) the following factors:
1. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official City Comprehensive Plan.
 2. The proposed use is or will be compatible with present and future land uses of the area.
 3. The proposed use conforms with all performance standards contained herein.
 4. The use, event, or activity is allowed by administrative permit and conforms to the applicable standards outlined in the zoning district in which⁴⁷ such use, event or activity is proposed.
- E. *Approval Report.* A written report or letter of approval shall be issued to the applicant when a determination⁴⁸ of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances, and the standards of this Ordinance shall be attached to the permit or letter.
- F. *Non-Compliance.* Determination of non-compliance with applicable codes, ordinances, and the standards in this Ordinance shall be communicated to the applicant in writing and the application of the permit shall be considered denied; unless, within ten (10) days of the date of such notice, the applicant submits revised plans and/or information with which the Zoning Administrator is able to determine compliance.

⁴⁷ Ord 02-2009, 4/21/2009

⁴⁸ Ord 02-2009, 4/21/2009

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G. *Disputes.* Unresolved disputes as to administrative application of the requirements of this ordinance shall be subject to appeal to the City Council.

H. *Administration and Enforcement.*

1. The Zoning Administrator shall keep a record of applications and administrative permits or approvals.
2. A copy of all administrative permits issued shall be forwarded to appropriate staff as determined by the Zoning Administrator.
3. Enforcement of the provisions of this Ordinance shall be in accordance with Section 12-59 of the Afton Code of Ordinances. Violation of an issued permit or of the provisions of this section also shall be grounds for denial of future permit applications.

Sec. 12-80. Amendments and rezonings.⁴⁹

A. *Initiation.* An amendment to this article may be initiated by the City Council, the Planning Commission or by petition of affected property owners as defined herein. An amendment not initiated by the Planning Commission shall be referred to the Planning Commission for study and report, as hereinafter provided, and may not be acted upon by the Council until it has received the recommendation of the Planning Commission on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the Planning Commission.

B. *Records.* The City Administrator shall maintain a record of all applications for amendments to this article.

C. *Application.* Where an amendment to this article is proposed by a property owner, an application therefore⁵⁰ shall be filed with the City Administrator; such application shall be accompanied by development plans, if any, for the use which requires the rezoning.

1. The development plans shall show such information as may be reasonably required by the administrator, including but not limited to those things listed below;
2. Such plans shall contain sufficient information for the City to determine whether the proposed development is in keeping with the intent and purpose of this article and the comprehensive plan:
 - a. Site plan drawn to scale showing the parcel, building dimensions and topography;
 - b. Location of all buildings and their sizes;
 - c. Curb cuts, driveways, access roads, parking spaces, off-street loading areas and sidewalks;
 - d. Landscaping and screening plans including species and size of trees and shrubs proposed;
 - e. Finished grading and drainage plan sufficient to drain the developed portion of the site and to retain as much run-off on the site as possible;
 - f. Type of business or activity and proposed number of employees or occupants;
 - g. Proposed floor plan and elevations of all buildings with the use indicated;
 - h. Location of on-site sewage treatment system and well with the estimated flow rates;
 - i. Soil type and soil limitations for the intended use. A plan or statement indicating the soil conservation practice or practice to be used to overcome any soil limitation shall be made part of the application;
 - j. A location map showing the parcel's general location within the City;
 - k. A map showing all principal land use within 500 feet of the parcel for which the application is being made;
 - l. Proof of ownership of the property for which the amendment or rezoning is requested, consisting of an abstract of title or registered property certificate certified by a licensed abstractor, or a title opinion prepared by an attorney licensed to practice in the state, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 - m. An accurate list of the names and mailing addresses of the record owners of all property within a minimum of 500 feet of the boundaries of the property for which the amendment or rezoning is sought, verified as to accuracy by the applicant.

D. *Hearing.* The City Administrator shall refer the application to the Planning Commission for consideration at its next regular meeting; provided however, if the next regular meeting of the Planning Commission is within

⁴⁹ Code 1982, § 301.506; Res. No. 1997-18, 6-17-97, Ord. 97-45, 11/13/01

⁵⁰ Ord 02-2009, 4/21/2009

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seven days of the date of filing, then such consideration may be at the second regular meeting after such filing.

1. At that meeting, the Planning Commission shall set a date for a public hearing on such application. The public hearing shall be not more than 60 days after the date of filing of the application with the City Administrator.
 2. Notice of the purpose, time and place of such public hearing shall be published in the official newspaper of the City and mailed to each of the owners of all property located within a minimum of 500 feet of the property described in the application, and such other persons as the Planning Commission may direct at least ten days prior to the date of the hearing. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners, or defects in notice shall not invalidate the proceedings, provided a bona fide attempt to comply with the provisions of this section has been made.
 3. The applicant or his representative shall appear at the public hearing to answer questions concerning the proposal.
- E. *Planning Commission report.* The Planning Commission shall make its report on the application to the Council, in writing, within 60 days after the public hearing, unless the applicant consents to extended consideration by the Planning Commission. The report shall recommend that the amendment or rezoning be granted or denied and shall include the Planning Commission's recommendation as to any conditions to be imposed if the amendment or rezoning is granted, including time limits or provisions for periodic review and shall state the reasons therefore⁵¹.
1. The Planning Commission's report shall be filed with the City Administrator who shall refer the same to the Council for consideration at its next regular meeting; provided however, if the next regular meeting of the Council is within seven days of the date of filing, then such consideration may be at the second regular meeting after such filing. At the same time, the City Administrator shall mail to the applicant a copy of the Planning Commission's report and a notice of the time and place of the meeting at which the report will be considered by the Council.
 2. If the Planning Commission fails to file a report with the City Administrator within the time provided by this section, the application shall be referred to the Council as herein provided, without report, after the time for filing the report has expired. Minutes of the public hearing and its regular meeting may be used by the Planning Commission as its report.
- F. *Council action on application.* The Council shall make its decision on the application within 60 days of the filing of the Planning Commission's report with the City Administrator or after the last day for filing same, if no report is filed.
1. The Council shall make written findings and shall state therein the reasons for its decision. Any such order shall be filed with the City Administrator who shall immediately mail a copy thereof bearing the notation of the filing date, to the applicant.
 2. If such order directs amendment of this article, the City Administrator shall refer the order to the City attorney to prepare an amendment of this article as provided by law.
 3. Any Amendment must be approved by a Two-Thirds Vote of the Members of the City Council
- G. *Reapplication.* No reapplication for zoning amendment or rezoning shall be resubmitted for a period of six months from the date of the denial of a previous application.
- H. *Zoning and the comprehensive plan.* Any amendment to this article or rezoning shall amend the comprehensive plan in accordance therewith. The Planning Commission shall inform the Council of any zoning proposal which does not conform to the comprehensive plan and inform the Council as to why the plan should or should not be amended.
- I. *Public hearing.* Prior to approval of any rezoning or amendment of this article that does not conform to the comprehensive plan, a public hearing shall be conducted by the Planning Commission and the results noted

⁵¹ Ord 02-2009, 4/21/2009

in the minutes of the official proceedings. The public hearing required for the rezoning or amendment may also serve as the public hearing for an amendment to the comprehensive plan.

- J. *Agreement with comprehensive plan.* In granting or recommending any rezoning provided for in this article, the Planning Commission and Council shall find that the proposed development conforms substantially to the policies, goals and standards of the comprehensive plan.

Sec. 12-81. Building permits and the building code.⁵²

- A. No structure shall hereinafter be erected or structurally altered until a building permit shall have been issued, indicating that the existing or proposed structure and the use of the land comply with this article and all building codes.
- B. No building permit shall be required for normal maintenance such as painting and other similar improvements, which do not involve structural changes to the building,⁵³ with the exception of the installation of siding, windows and doors for which the International Residential Code (IRC) requires such building permit.⁵⁴
- C. Deleted.⁵⁵
- D. No site preparation work, including rough grading, driveway construction, footing excavation, tree removal or other physical changes to the site shall occur prior to the issuance of a building permit and any zoning permits as required by this article.
- E. Applications for permits as required by this section shall be made to the building official. The building official shall maintain a record of all applications for and all permits issued under this section.
- F. Application for a building permit shall be accompanied by a site plan drawn to scale showing the dimensions of the lot to be built upon; the size and location of the building, utilities including on-site septic systems, and accessory buildings to be erected; the vegetation and major topographic changes; drawings of the improvement in sufficient detail to allow checking against the building code; and such other information as the building official may reasonably require to determine compliance with this article and the building code. The building official may require a certificate of survey before a building permit will be issued.
- G. No building permit shall be issued for any improvement which would result in a use, building or structure violation of this article, or the subdivision, shoreland management, floodplain, sanitary sewer disposal, mining, Lower St. Croix River Bluffland and shoreland management, articles III through X of this chapter, or other city ordinances.
- H. The work for which a building permit is issued shall commence within 180 days after the date thereof unless an application for an extension of 90 days has been submitted to the building official and approved by him.⁵⁶
- I. Permits issued by the building official under the provisions of this section and the building code shall expire and be null and void if the work authorized by a permit is abandoned or suspended for a period of 180 days or if work is not commenced or completed within the time limitations of Subsection (H) of this section.⁵⁷
- J. A building permit for new construction shall not be issued for a lot which either does not meet the minimum area of acceptable soils for on-site sewage disposal and treatment or does not have enough acceptable soils within the lot or under legal contract to construct at least two complete septic drainfield systems.

⁵² Code 1982, § 301.507; Res. No. 1997-18, 6-17-97 **Cross reference(s)**--Buildings and building regulations, § 12-1771 et seq.

⁵³ Ord 1997-20, 4/20/99

⁵⁴ Ord 07-2012, 12/18/12

⁵⁵ Ord 1997-20, 4/20/99

⁵⁶ Ord 1997-20, 4/20/99

⁵⁷ Ord 1997-20, 4/20/99

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- K. The building official may, in writing, suspend or revoke a permit issued under the provisions of this article and the building code whenever such permit is issued in error or on the basis of incorrect information supplied, or in violation of any city ordinance, regulation or code.

Sec. 12-82. Moving permits and relocated structures.⁵⁸

Before any building or structure which has been wholly or partially erected on any premises, located either within or outside of the City, can be moved to and be placed upon any other premises in this city, a building permit shall be obtained. The applicant shall submit along with the application for a building permit: Photographs taken from two or more angles of the structure to be moved; photographs of the lots on which the structure is to be located; and photographs of adjacent lots and structures. Any such building or structure shall conform to all the provisions of this article and the building code in the same manner as a new building or structure. These requirements do not apply to construction sheds, agricultural buildings, or temporary structures to be located on a lot for 12 months or less. If the City Administrator concurs with the building official that a building or structure would depreciate or otherwise be incompatible with the area into which it is to be moved, it may withhold issuance of a permit for such relocation. If the City Council grants a moving permit, it may impose such conditions as it deems to be in the public interest.

Sec. 12-83. Septic permits.⁵⁹

- A. No building permit for any use requiring on-site sewage treatment and disposal shall be issued until a septic permit has first been issued by the building official.
- B. A septic permit shall be issued only after proof is furnished by the applicant that a suitable on-site sewage treatment and disposal system can be installed on the applicant's lot. In the Historic Village Septic Treatment Service Area, no new permits will be issued for Individual Septic Treatment System. All septic systems shall conform to all of the requirements of the sanitary sewer disposal ordinance, Article IX of this chapter.
- C. Notwithstanding the procedures and regulations specified in Section 12-1953, existing on-site sewage treatment systems shall be evaluated to determine location, condition and function, and shall be brought into conformance with this article and the sanitary sewer disposal ordinance, Article IX of this chapter when:
1. An application for a building permit for construction of an addition onto the principal structure or a structural alteration of the principal structure is submitted to and approved by the building official.
 2. The use of a structure or property changes.
 3. A Conditional Use Permit for a duplex is granted by the City Council.
 4. The building official deems it necessary to upgrade the existing system, based upon evidence of the system failing to function properly, failing to adequately treat sewage, or otherwise posing a hazard to the public health.
 5. Upon sale or transfer of the property.
- D. Notwithstanding the provisions specified in Sections 1953 & 1954, when an existing nonconforming septic system is required to be upgraded according to Section 12-83(C), the new on-site sewage treatment system shall be installed prior to the issuance of a building permit unless a financial guarantee equal to 125 percent of the cost of installing such a system and is valid for one year is issued to the City.

Sec. 12-84. Driveway access permits and standards.⁶⁰

- A. *Access required.* All lots or parcels shall have direct adequate physical access for emergency or public safety vehicles along the frontage of the lot or parcel from either an existing improved city street or an existing private road approved by the City. In addition to the required direct physical access, a lot or parcel may have a private easement access driveway to the lot over adjacent lots or parcels.

⁵⁸ Code 1982, § 301.508; Res. No. 1997-18, 6-17-97

⁵⁹ Code 1982, § 301.509; Res. No. 1997-18, 6-17-97, Ord 1997-10, 5/19/98; Ord 04-2015, 9/15/2015

Cross reference(s)--Sewage, § 12-1951 et seq.

⁶⁰ Code 1982, § 301.510; Res. No. 1997-16, § 11, 6-17-97

Cross reference(s)--Streets and sidewalks, Ch. 20.

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- B. *Permit required.* Construction or alteration of all driveways onto city streets, approved private roads, county roads, and state roads shall require a driveway access permit. All driveways onto a street designated as a state highway shall require an access permit from the state. All driveways onto a street designated as an approved private road or city street shall require an access permit from the City Engineer. All driveways onto a county road shall require an access permit from the county highway department and must meet all county regulations. A performance deposit shall be required as per the City ordinance.
- C. *Permit application.* All applications for a city driveway permit shall be submitted to the Zoning Administrator. Applications shall include:
1. Application for driveway permit;
 2. A site plan drawn to scale including, but not limited to, the following information: Proposed location of driveway, all structures on the lot, septic system drainfield, well, and major topographic features;
 3. Financial guarantee;
 4. Copy of an issued county or state access permit if required.
- D. *Driveway design standards.* All driveways and all applications for such shall indicate that the proposed driveway meets the following standards:

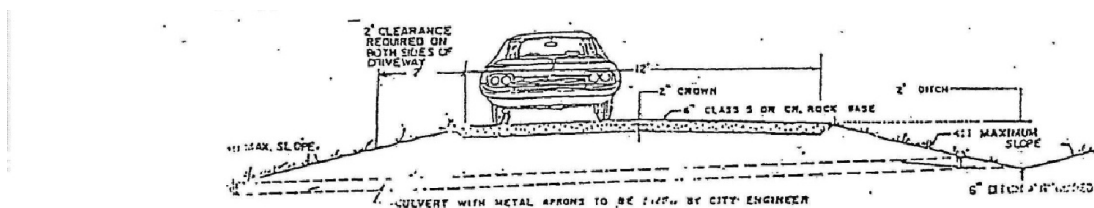
	Residential Uses	Commercial and Industrial Uses
Maximum slope	12%, but driveways with slopes greater than 10% must have bituminous surface	8%
Minimum width	12 feet	16 feet
Maximum width	22 feet	As determined by the City
Minimum clearance each side of centerline	6 feet, but if less 10 feet bituminous surface may be required by City Engineer	10 feet
Surface strength	Minimum of 6 inches class V gravel or its equivalent as determined by the City Engineer	
Culverts	Size and type to be determined by the Zoning Administrator as per engineering standards. Aprons or an alternative as per engineering standards shall be required.	
Maximum side	4:1, but slopes as steep as 3:1 may be allowed in an area of fill subject to approval of the City Engineer. Where existing slopes are steeper than 3:1, a driveway may be permitted upon compliance with a stabilization plan prepared by a registered professional engineer to City Engineer satisfaction.	4:1
Minimum width in right-of-way	16 feet	As determined by the Zoning Administrator
Maximum grade in right-of-way	3%	3%
Minimum turning radius onto street	5 feet	10 feet
Maximum turning radius onto street	15 feet	40 feet
Minimum driveway angle in right-of-way	60°-90°	60° - 90°
Minimum vertical	12 feet	12 feet clearance
Minimum lot line setback	10 feet	10 feet
Minimum setback from principal structure	3 feet	5 feet

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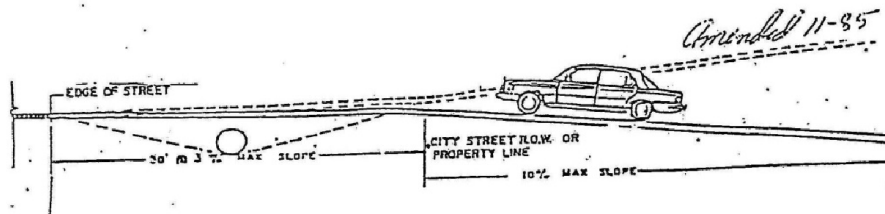
Minimum setback from intersection of two or more rights-of way	60 feet (20 feet in VHS)	60 feet
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All applications for a driveway permit that do not meet these minimum standards shall submit any additional information as may be required by the Zoning Administrator.

- E. *Turnaround.* All residential structures set back more than 150 feet from the centerline of the fronting city street or approved private road shall provide a turnaround in the driveway near the principal structure. The turnaround area shall be a minimum of 40 feet by 50 feet, have a minimum turning radius of 45 feet if a cul-de-sac, or be a design approved by the Zoning Administrator. All turnarounds shall have the same surface strength as required for the driveway.
- F. *Permit issuance restricted.* No building or septic permit shall be issued for a particular parcel of property until a driveway permit has been approved or issued.
- G. *Conformity of work.* Before any site preparation work is done, that part of the driveway located in the street right-of-way shall be constructed according to the permit.
- H. *Number and type.* The number and types of driveways onto city streets may be controlled and limited in the interests of public safety and efficient traffic flow as determined by the Zoning Administrator.
- I. *Change of use.* Upon a change in land use or a major change in the traffic pattern of the existing use, existing driveways are not automatically perpetuated and a new driveway application may be required.
- J. *Financial guarantee.* To assure compliance with this article and the conditions of any driveway permit, the Zoning Administrator may require a financial guarantee from each applicant. The financial guarantee may be in the form of a performance bond, irrevocable letter of credit or escrow deposit as regulated in other sections of this article. The amount of the financial guarantee shall be equal to 125 percent of the estimated cost of the construction of the driveway, or an amount determined by the Zoning Administrator. A financial guarantee shall be released to the applicant upon satisfactory completion of the driveway installation according to this article and any conditions of the driveway permit.
- K. *Typical Driveway Cross Section.*



- L. *Typical Driveway Profile.*



- M. *Review and approval.* The City Engineer shall review and approve driveway plans that have greater than a ten percent grade, provide less than a 16-foot clearance, and have less than a 4:1 side slope. The City Engineer shall determine if the plans must be prepared by a registered professional engineer and if a financial guarantee

in the amount of 125 percent of the cost of construction of the driveway and stabilization of the slopes must be posted with the City. A financial guarantee valid for one year following completion may be required for erosion control and slope stabilization. Soil conservation service and watershed district approval (where applicable) will be required. The applicant will be responsible for all costs incurred by the City for review of the plans, inspection, as well as preparation of any legal documents required for approval.

Sec. 12-85. Grading permits.

Repealed.⁶¹

Sec. 12-86. Farm site plan permits.⁶²

Agricultural buildings and/or structures, as defined in Minnesota Statute 326B.103, on parcels of 20 and more acres shall require a farm site plan permit to be issued by the Zoning Administrator. An application for a farm site plan permit shall include but not be limited to the following:

- A. Location of all existing structures on the property;
- B. Dimensions of existing structures;
- C. Use of existing structures;
- D. Location of driveway, well, septic tank and septic drainfield;
- E. Location of proposed structure;
- F. Dimensions of proposed structure;
- G. Use of proposed structure;
- H. Setbacks of all existing and proposed structures from lot lines, street, slopes exceeding 18 percent, drainage courses, wetlands and bodies of waters; and
- I. Any other information as may be required by the Zoning Administrator.

Sec. 12-87. Certificate of occupancy.⁶³

- A. No person may change the use of any land except for agricultural purposes or for the construction of essential services and transmission lines, or occupy a new or structurally altered building used for nonagricultural use after the effective date of the ordinance from which this article was derived, unless he has first obtained a certificate of occupancy.
- B. Application for a certificate of occupancy for a new building or for an existing building which has been so altered may be filed with the building official any time after the application for a building permit for such building. The certificate of occupancy shall be issued within ten days after the construction or alteration of such building or part thereof has been completed in conformity with the provisions of this article and the building code. Pending the issuance of such certificate, a temporary certificate of occupancy may be issued, subject to the provisions of the building code for a period not to exceed 12 months during the completion of the erection or the alteration of such a building. The temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the City relating to the use or occupancy of the premises or any other matter except under such restrictions and provisions as will adequately insure the safety of the occupants. The use of any structure for which a building permit is required shall be considered a violation of this article unless a certificate of occupancy has been issued.

⁶¹ Ordinance 08-2005, 5/17/08 (repealed 12-85; amended 12-55, 12-76 and 12-215)

⁶² Code 1982, § 301.512, Ordinance 12-2005, 9/20/2005

⁶³ Code 1982, § 301.513

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- C. Application for a certificate of occupancy for a new use of land shall be made to the building official before any such land shall be so used. Such certificate shall be issued within ten days after this application if the use is in conformity with the provisions of this article.
- D. A record of all applications for and certificates of occupancy shall be kept on file.

Sec. 12-88. Fees.⁶⁴

There shall be an application fee for all applications made pursuant to the provisions of this article and other city ordinances as set by resolution from time to time by the City Council.

Sec. 12-89. Environmental assessment worksheets (EAW) and environmental impact statements (EIS).⁶⁵

- A. No zoning use permit, building permit, structure or land use, variance or ordinance amendment shall be approved prior to review by the Zoning Administrator to determine the necessity for completion of an EAW as required by the environmental quality board (EQB) environmental review program, 6 Mn Rules, §§ 3.021-3.056.
- B. The purpose of an EAW is to assess rapidly, in a worksheet format, whether a proposed action is a major action with the potential for significant environmental affects, or in the case of a private action, whether it is of more than local significance.
- C. Projects which shall be required to file a mandatory EAW with the City shall include:
 - 1. Construction of a new or expansion of an existing industrial or commercial facility equal to or in excess of 100,000 square feet of gross floor area.
 - 2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals which will excavate 40 or more acres of land to a mean depth of ten or more feet during its existence.
 - 3. Construction of a permanent or potentially permanent residential development of 50 or more unattached dwelling units.
 - 4. Construction of a street on a new location over one mile in length that will function as a collector.
 - 5. Construction of additional travel lanes on an existing street for a length of one or more miles.
 - 6. The addition of one or more new interchanges to a completed limited-access highway.
 - 7. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more square feet of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft.
 - 8. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles.
 - 9. Actions that will change or diminish the course, current, or cross-section of one acre or more of any protected water or protected wetland.
 - 10. Actions that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of a Type 3 through Type 8 wetland (as defined in United States Department of Interior, Fish and Wildlife Service, Circular 39, Wetlands of the United States, 1956, excluding protected wetlands, if any part of the wetland is within a shoreland area, delineated floodplain or a state or federally designated wild and scenic river district.
 - 11. Actions resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use.
 - 12. Actions resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use.
 - 13. The construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 or more animal units.
 - 14. Destruction of a property that is listed on the National Register of Historic Places.

⁶⁴ Code 1982, § 301.514

⁶⁵ Code 1982, § 301.515, **Cross reference(s)--Environment, ch. 10.**

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- D. An optional EAW may be required by the Zoning Administrator or City Council if it determines that because of the nature or location of any proposed action or development, the action or development may have the potential for significant adverse environmental effects.
- E. As part of any permit approval, the City shall require the applicant to submit an EAW to any governmental unit that might require one for the particular proposed use or action.
- F. Those activities listed in 6 MN Rules, § 3.041 shall be exempt from these regulations.
- G. Prior to or together with any application for a permit or other form of approval for an activity, the proposer shall prepare an EAW of the action's environmental effects, reasonable alternatives to the project and measures for mitigating the adverse environmental effects. Blank EAW forms will be available from the Zoning Administrator and the City Clerk. The proposer shall submit the completed EAW to the Zoning Administrator. The Zoning Administrator shall review the EAW and determine the adequacy of the document. The Zoning Administrator shall use the standards of the state's environmental review program rules in its determination of adequacy. If the Zoning Administrator determines the document is inadequate, he shall return the document to the proposer to correct the inadequacies.
- H. The Zoning Administrator shall submit a copy of the EAW to the Planning Commission and City Council members, to any person upon request, to any local unit of government that might be affected by the proposal, and to the EQB. The EQB shall publish notice of the availability of the EAW in the EQB Monitor. The Zoning Administrator shall also publish a release in the official newspaper stating the name and location of the action, a brief description of the activity, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting.
 - 1. The Planning Commission shall review the EAW at its next regularly scheduled meeting after the Zoning Administrator accepts the EAW from the proposer. The Planning Commission shall recommend to the City Council whether or not there are significant environmental effects from the project to require the preparation of an EIS.
 - 2. Comments on the EAW shall be submitted to the Zoning Administrator within 30 days following the publication of the notice of availability in the EQB Monitor. The Planning Commission may hold a public hearing to receive comments on the EAW if it determines that a hearing is necessary or useful. The hearing may be combined with any other meeting or hearing for a permit or other approval for the project. Public notice of the hearing shall be published as required in Section 12-78.
- I. The City Council shall decide whether or not an EIS must be filed according to its review of the EAW no later than 60 days after the publication of the notice of availability in the EQB Monitor. The City Council shall, whenever practicable and consistent with other ordinances and regulations, require that mitigation measures identified in the analysis be incorporated in the project's design and construction. The City Council shall notify the EQB and all persons and governmental units that commented on the EAW of its decision within ten days.
- J. If preparation of an EIS is required, the proposer shall follow the procedure outlined in the state's environmental review program rules.
- K. Any proposed project or use for which an EIS is required shall be considered a Conditional Use Permit as defined in this article and shall comply with the procedure for approval of a Conditional Use Permit.
- L. Time delays in the normal permit process caused by the filing and review of an EAW and/or EIS shall not be considered part of the permit approval time requirements within this article. Such delays shall be considered as additional required time for each required permit. The permit process for the proposed project may be continued from the point it was interrupted by the EAW/EIS process.
- M. Any applicant shall reimburse the City prior to the issuance of any permits, for all reasonable costs, including legal and consulting fees, incurred by the City in review of the applicant's project and its impact on the community.
- N. The applicant shall deposit with the City from time to time an amount determined by the Zoning Administrator, necessary to cover such costs prior to commencement of the review or stage of the review.

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The applicant shall reimburse the security fund for any deficits caused if the amount actually expended or billed to the City by the consultants exceeds the security fund balance. The City shall refund any money deposited in the security fund and not expended within 30 days after final action on the application. The City shall not pay interest on such security funds.

Secs. 12-90--12-130. Reserved.

DIVISION 3. DISTRICTS

Sec. 12-131. Districts generally.⁶⁶

- A. *Basic districts.* For the purpose of this article, the community is hereby divided into the following basic zoning districts:

District Symbol	Intent and Primary Use
A	Preserve agriculture as a viable permanent land use and a significant economic activity within the City.
MS	Provide an area for storage and repair of boats and boat trailers to complement the river access and marinas in Afton.
RR	Provide rural low density housing on lands not capable of supporting long term, permanent agricultural production.
VHS-R	Provide higher density housing consistent with a village atmosphere on lots capable of supporting on-site sewage treatment systems in order to prevent the need for public services.
VHS-C	Provide a mix of commercial and residential uses within the old village consistent with the atmosphere of a rural village.
I	Provide areas adjacent to major thoroughfares for the express use of industrial developments.

- B. *Overlay districts.* The following overlay regulations are in addition to regulations imposed by the existing basic zoning district:

District Symbol	Intent and Primary Use
AP	Preserve large areas of agricultural production and provide owners of these areas with economic incentives in accordance with the Agricultural Preserves Act.
C	Preserve, protect and manage environmentally sensitive areas having wet soils, steep slopes, exposed bedrock or unique natural and biological features in accordance with compatible uses.
FP	Protect the natural environment, homes and other structures from floodwaters by preserving the natural overflow of lakes, streams, rivers, and watersheds.
LS-1	Protect the ecological and scenic values of water bodies by regulating setbacks and lot sizes.
SCRU	Provide urban density residential and commercial uses within the old village while conserving and protecting the natural scenic values and resources of the St. Croix River Valley.
SCRR	Conserve and protect the natural scenic values and resources of the St. Croix River Valley in order to maintain the high standard of environmental quality indicative of one of the few remaining wild rivers in the nation.

Sec. 12-132. Minimum requirements.⁶⁷

- A. *Minimum area, height, etc.* The following chart sets out the dimensional requirements of each basic zoning district:

⁶⁶ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.601

⁶⁷ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.602; Res. No. 1997-16, §§ 12--14, 6-17-97, Ord. 97-39, 3/20/00

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	A	RR	VHS-R	VHS-C	I-1A	I-1B	I-1C	MS
1. Lot area per dwelling unit (d.u.)								
One-family structure	⁶⁸ du/10A*** (5 A min)	5A***	22,500 sf***	22,500 sf***				5A
Two-family		10A***						
2. Minimum main floor area per du (sf)	800	800	800	800	800	800	800	800
3. Minimum nonresidential area				22,500 sf	5A	5A	5A	5A
4. Frontage on improved public street (ft) and lot width on cul de sac	300***	300***	150***	150***	300***	300***	300***	300***
5. Lot depth (ft)	300*	300*	130*	130*	300*	300*	300*	300*
6. Front yard setback for all structures from centerline ⁶⁹								
a. Local Afton Roads (except 15th St., 60th St. and 50th St. west of Co. Hwy. 21)	105	105	0*****	65	105	105	105	105
b. State and County Hwys. And 15th St., 60th St. and 50th St. west of Co. Hwy. 21	150**	150**	0*****	65	150**	150**	150**	150**
7. Structures located on a lot that does not have frontage on a public road shall meet both of the following front yard setback requirements: ⁷⁰								
a. Structures shall meet the required setback from the centerline of a public road.								
b. Structures shall meet a setback from the front property line equal to the required rear yard setback.								
8. Side yard setback for all structures (except accessory bldgs. Over 1500 sf)								
a. From street	As required in Subsection (A)(6) of this section for corner lot (ft)							
b. From interior lot line (ft)	50	50	10	10	50	50	50	50
	See Subsection (D)(6) of this section							
9. Rear yard setback for all structures (except accessory bldgs. Over 1500 sf)	50	50	30	30	50	50	50	50
10. Setbacks - Accessory Buildings over 1500 sf (ft)								
a. Side	100	100	NA	NA	50	50	50	50
b. Rear	100	100	NA	NA	50	50	50	50
c. Well	200	200	NA	NA	50	50	50	50
11. Maximum structure height (ft)	35	35	35	35	35	35	35	35
12. Maximum site coverage by any structure and/or impervious surface ^{71,72}	10% or ½ acre, whichever is greater	10% or ½ acre, whichever is greater	20% *	20% or 4,350 square feet, whichever is greater *	35% ⁷³ *	35% ⁷⁴	35% ⁷⁵	25%
13. Maximum buildable slope for structures (percent) except substandard structures****	18	18	12	12	18	18	18	12
14. Maximum slope for on-site sewage treatment systems and driveways (see 12-84D)	12	12	12	8	8	8	8	12

sf = square feet du = dwelling unit

⁶⁸ Ordinance 7-2006, 3/16/2006

⁶⁹ Repealed Ordinance 02-2008

⁷⁰ Ordinance 03-2014, 12/16/14

⁷¹ Ordinance 11-2008, 12/17/08, Repealed Ordinance 02-2008

⁷² Ordinance 11-2008, 12/17/08

⁷³ Ordinance 05-2009, 6/16/2009

⁷⁴ Ordinance 05-2009, 6/16/2009

⁷⁵ Ordinance 05-2009, 6/16/2009

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- * Maximum three times the width of the lot on any lot of ten or more acres.
 - ** Whenever the street right of way is greater than 66 feet, the setback shall be 117 feet from the edge of the street right-of-way.
 - *** Any division of land resulting in two or more parcels of less than 20 acres, having a width of less than 500 feet at the front lot line shall require subdivision approval. The state legislature has restricted, in municipalities having subdivision regulations, the filing and recording of conveyances on parcels of residential or agricultural land of less than 20 acres and having a width of less than 500 feet where the conveyance results in a division of the parcel into two or more parcels, any one of which is less than 20 acres in area or 500 feet in width.
 - **** Exceptions to the slope requirement for substandard structures are found in Section 12-57(J)⁷⁶
 - ***** Subject to all corner lots meeting an 80-foot site triangle.
- ^ The maximum site coverage and/or impervious surface in the I-1C Industrial District may exceed 35 percent per conditional use approval subject to the site not exceeding a maximum of 65 percent and meeting the requirements of Section 12-132(B)(12) and 12-132(C)(1-4). Any site with coverage and/or impervious surface in excess of 25 or 35 percent shall require an effective reduction of the impact of such impervious surface to the equivalent of 25 or 35 percent impervious surface site coverage through the use of Low Impact Design (LID) methods and the completion and acceptance by the City Engineer, Washington Conservation District (WCD) engineer, and Valley Branch Watershed Organization (VBWD) engineer of the Impervious Surface Worksheet, as set forth in the City of Afton Best Management Practice (BMP) and Storm water Guide.⁷⁷

B. Exceptions to minimum area, height, and other requirements:

1. For the purpose of this article, the term "existing lot" means a lot or parcel of land which was of record as a separate lot or parcel in the office of the county recorder, on or before the adoption date of the ordinance from which this article was derived, except as provided for in Subsection (B)(2).
2. Except in the VHS-R and VHS-C zoning districts, any such lot or parcel created in accordance with the City subdivision ordinance, article VI of this chapter, which contains at least 2 1/2 acres of buildable or net developable area as defined by this article and has at least 60 percent of the required frontage on an improved public street for the zoning district in which it is located shall be considered buildable provided the lot or parcel can comply with all other requirements of this article, including Subsection (B)(3) of this section.⁷⁸
3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the same person, any individual lot or parcel does not meet the full width or area requirements of this article, such individual lot or parcel cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots or parcels under the same ownership so that the combination of lots or parcels will equal one or more parcels of land each meeting the full lot width and area requirements of this Article.
4. Subdivision of lots. Any lot or parcel of land subdivided by any means after the effective date of the ordinance from which this was derived for purposes of erecting a structure, must be approved as required in the subdivision ordinance, Article VI of this chapter.
5. Lake and stream frontage lots. All lots having frontage on a water body or lying within a shoreland management area shall be subject to the regulations of the shoreland management ordinance, Article III of this chapter.
6. Lots in floodplains. All lots in a designated floodplain shall be subject to the regulations of the floodplain ordinance, Article V of this chapter.
7. Through or double frontage lots. Such lots are those as defined in the subdivision ordinance, Article VI of this chapter and include lake and stream frontage lots having a public street as one lot line and a water body as the opposite lot line. The Zoning Administrator shall determine what shall be considered the front, side and rear yards for application of the provisions of this.
8. Reduction of required area. No lot or parcel shall be reduced in area or dimension so as to make such lot or parcel less than the minimum required by this Article; and if the existing lot or parcel is less than the minimum required, it shall not be further reduced.
9. Minimum area requirements for lots. Since no public sanitary sewer is planned to be installed in the City, all single and two family homes shall demonstrate suitable soil conditions for a minimum on-site sewage treatment area of one acre per dwelling unit. A building permit shall not be issued for a lot which does

⁷⁶ Repealed Ordinance 02-2008

⁷⁷ Ordinance 05-2009, 6/16/2009

⁷⁸ Ord 1997-19, 4/20/99, MS added

- not either meet the minimum acreage of acceptable soils for on-site sewage treatment or does not have enough acceptable soils within the lot or under legal contract to construct at least two complete septic/drainfield treatment systems.
10. All on-site sewage treatment systems shall be maintained in conformity with the regulations of the sanitary sewer disposal ordinance, Article IX of this chapter. Where there is evidence of the system failing to function properly, failing to treat sewage adequately, septic tank effluent percolating from the ground or where there is evidence a failing system is posing a hazard to the public health, the system shall be corrected and conform to these standards within 30 days.⁷⁹
 11. Land having a slope between 13 percent and 18 percent, outside of the Lower St. Croix bluffland district, may be included in the required buildable area of a lot or parcel if the Washington County Soil and Water Conservation District has determined that:
 - a. The soils on the land will support the structures, on-site sewage treatment systems and driveways without significant risk of erosion, groundwater contamination or damage to structures thereafter constructed; and,
 - b. The development of this land will not damage heavily wooded areas or other significant natural features; and,
 - c. All structures, including driveways, are set back at least 40 feet from the crest of any 18 percent slope; and,
 - d. There is at least one acre of contiguous land with a slope of less than 13 percent that is suitable for the required on-site sewage treatment systems and the driveways.
 12. Site coverage (impervious surfaces) for churches and institutional housing permitted by Administrative Permit in the RR zoning district may exceed their allotted maximum impervious surface allowance, provided that:⁸⁰
 - a. The soils on the land will support the structures and required on-site sewage treatment systems, parking areas, driveways and other proposed impervious surface. The site shall demonstrate the development does not pose significant risk of erosion, groundwater contamination or surface water discharge in excess of standards used by the watershed district and the Washington Soil and Water Conservation District. In addition, whenever possible low impact development methods shall be used to mitigate any groundwater discharge; and
 - b. The applicant will restrict its surface water runoff to predevelopment rates to be in conformance with the watershed district rules and regulations; and
 - c. The applicant will restrict its surface water runoff volumes to those volumes that would have been generated from the site had it been developed to have 10% of the parcel covered with impervious surfaces. That applicant shall prove that runoff equal to $\frac{3}{4}$ inch times the total impervious surface area minus $\frac{3}{4}$ inch times 10% of the impervious area shall infiltrate within 72 hours based on the infiltration rate of the soil. No infiltration basin shall be deeper than 2 feet. The bottom of all infiltration basins shall be a minimum of 2 feet above the seasonal high water table; and
 - d. The development proposed by the applicant is in harmony with the goals of the Comprehensive Plan.
 13. Wherever in this article a parcel or lot area of five or more acres is required, except for the subdivision or creation of new parcels or lots, that requirement may be met by a “nominal parcel” as defined in the Article. All new parcels or subdivision of existing parcels must meet all of the requirements of this Article”
 14. The maximum impervious surface coverage in the I1-A, I1-B and I1-C⁸¹ zoning districts may be increased up to 35 percent, provided that the storm water impact and runoff from the site, both as to volume and rate, is equivalent of a surface coverage of 25 percent. The method and completion of reduction shall be approved by the City Engineer, Washington County Engineer and Valley Branch Watershed District.⁸²
- C. The following additional engineering and design guidelines are to be met for any use within the agricultural, except for agricultural activities and residences, rural residential, except for residences and agricultural activities, and industrial zoning districts:

⁷⁹ Ord 1997-10, 5/19/98

⁸⁰ Repealed Ordinance 02-2008

⁸¹ Ordinance 01-2009, 1/20/2009

⁸² Ordinance 09-2008, 9/16/2008

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1. The applicant shall also submit a plan for the entire site, showing what low-impact design methods are used. The applicant shall work directly with the City to develop the plan, using low-impact design methods, as established by the Washington County Soil and Conservation Office and the appropriate governing bodies Water Management Organization or Watershed District Management Office. The plan shall be reviewed and approved by both the City and the Washington County Conservation Office prior to any building permits being issued.
 2. The applicant must identify⁸³ in the development agreement all areas where there is any fractured bedrock. The City may require, as part of the study, a geotechnical analysis including soil borings taken, at a minimum radius of every 150 feet. In addition, any fractured bedrock found within 150 feet of any area of construction, must be covered with a minimum of 5 feet of soil to reduce the potential for any pollutants reaching the ground water.
 3. The applicant may be asked, as a condition, to install a time dosing device to control rate of the flow of effluents from the septic system.
 4. The development agreement must address traffic concerns, and any improvements needed to accommodate additional traffic, as a result of the use.
 5. The applicant shall also enter into a development agreement, to address all of the conditions as set forth in Sec. 12-132(12)(b)(a)(1-10) and Sec. 12-132(12)(b)(c)(1-4), along with a cash escrow deposit or an irrevocable letter of credit, equal to 150 percent of the City Engineer's estimate to implement the low-impact design plan and for the maintenance of the low-impact areas for the next 20 years. A separate cash escrow deposit or an irrevocable letter of credit equal to 150 percent of the City Engineer's estimate shall also be required to satisfy any conditions agreed to in the development agreement, in order to satisfy Sec. 12-132(12)(b)(4).).
- D. *Permitted encroachments on required yards.* The following shall be permitted encroachments into setback and height requirements, except as restricted by other sections of this article:
1. In any yards: Posts, off-street parking spaces, flues, belt course, leaders, sills, pilasters, lintels, cornices, eaves, gutters, awnings, canopies, steps, chimneys, flag poles, ornamental features, open fire escapes, sidewalks, fences, essential services; exposed ramps (wheelchair) and similar features provided they do not extend above the height of the ground floor level of the principal structure or to a distance less than three feet from any lot line nor less than one foot from any existing or proposed driveway; floodlights or other sources of light illuminating authorized illuminated areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
 2. On a corner lot, nothing shall be placed or allowed to grow in such a manner as to impede vision between a height of 2 1/2 and ten feet above the centerline grades of the intersecting streets within 100 feet of such intersection.
 3. In rear yards: Recreational and laundry drying equipment, picnic tables, open arbors and eating facilities, provided these are not less than five feet from any lot line.
 4. In yards abutting streets: Encroachments in any yard that abuts a public or private street shall be considered as permitted encroachments as outlined above, except that no encroachment shall be permitted within two feet of the present or proposed right-of-way lines.
- E. *Setbacks.*
1. Front setbacks. Where a vacant lot is adjacent to structures existing at the time of adoption of this article having a substandard setback from that required by this section, the Zoning Administrator shall determine a reasonable, average, calculated front yard setback to implement the requirements of this section, and to fulfill its purpose and intent. However, in no case shall a building be required to be setback more than 180 feet from the street centerline, except where an industrial district is adjacent to a residential district. In a residential zoning district, the front yard setback shall conform to the established setback line, unless the Zoning Administrator determines that another setback is more appropriate as provided herein.⁸⁴
 2. Setbacks from slopes. All structures, including but not limited to, driveways, decks, swimming pools, and so forth, shall be setback a minimum of 20 feet from the crest of all slopes exceeding 18 percent as determined by the Zoning Administrator. An exception to this requirement, allowing an encroachment

⁸³ Amendment 02-2009, 4/21/2009

⁸⁴ Ord. 1997-27, 1/18/00, Ord. 1997-32, 3/14/00

within the 20 setback from an 18 percent slope, is allowed outside of the Lower St. Croix River Bluffland and Shoreland Management District via a CUP. As a condition of approval the applicant must submit an erosion control plan for the proposed encroachment. The erosion control plan shall be reviewed and approved by the City Engineer. In addition, the Zoning Administrator shall require a performance bond or Letter of Credit for a period of two (2) years beginning at the time of completion to ensure the applicant adheres to the erosion control, landscaping and any revegetation plan. The performance bond or letter of credit shall equal 125% of the total cost of the erosion control as recommended by the City Engineer.⁸⁵

3. Setbacks adjacent to residential zoning districts. Where a commercial or industrial zoning district is adjacent to a residential zoning district, the minimum commercial or industrial building setback from the lot line shall be 75 feet.
4. Setbacks along collector and arterial streets. Along streets designated as collectors and arterials in the comprehensive plan, the minimum setback for all structures shall be as required in Subsection (A)(6) of this section from the nearest planned street centerline.
5. Setbacks from private roads. All setback requirements of this section shall also be applicable to private roads and easement access rights-of-way.
6. Side yard setback from interior lot line on substandard lots. The side yard setbacks for all structures from interior lot lines on lots in the rural residential and agricultural zones, which are less than five acres in size and which were of record prior to March 3, 1970, shall be 25 feet rather than 50 feet if the proposed structure meets the requirements for a Administrative Permit as set out in Section 12-79 and meets all other zoning ordinance requirements.
7. Side yard setback from interior lot line on extreme substandard rural residential lots. The sideyard setback for all structures from interior lot lines on lots in the rural residential district which are two acres or less in size and/or have a lot width of 200 feet or less the setback shall be 10 feet rather than 25 feet if the proposed use meets all other zoning ordinance requirements.⁸⁶

F. *Height.*⁸⁷

1. No structure except those for public utilities, wind generators, farm buildings, churches and other places of worship shall exceed a height of 35 feet. The maximum height limitations for churches and other places of worship shall be as follows:
 - a. A maximum height of thirty-five (35) feet for the occupied area of the structure;
 - b. A maximum height of fifty (50) feet for the structural elements;
 - c. A maximum height of sixty (60) feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements;

- G. *Public convenience structures.* No public convenience structure shall be located within the public right-of-way except by Administrative Permit issued by the Zoning Administrator. Such structures shall include but not be limited to trash containers, institutional directional signs, bicycle racks, benches, planting boxes, awnings, flag poles, light standards, stairs, stoops, light wells, signs (except as may be allowed in Section 12-210. C.) and others. Such structures do not include public utility facilities.⁸⁸

Sec. 12-133. Zoning district map.⁸⁹

- A. The boundaries of the districts as established by this article are as shown on the map published herewith and made part of this article, such map is designated as the official zoning map of the City and shall be maintained as provided herein by the City Administrator. The district boundary lines on such map are intended to follow street right-of-way lines, street centerlines or lot lines unless such boundary line is otherwise indicated on the map. In the case of unsubdivided property or in any case where street or lot lines are not used as boundaries, the district boundary lines shall be determined by use of dimensions or the scale appearing on the map. All of the notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and are hereby made a part of this article by reference and incorporated herein as fully

⁸⁵ Ord 13-2004, 9/21/2004

⁸⁶ Ord 2004-45, 8/17/2004

⁸⁷ Ord 03-2015, 8/18/2015

⁸⁸ Ord 01-2014, 5/20/2014

⁸⁹ Code 1982, § 301.603

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as if set forth herein at length. Whenever any street or other public way is vacated, any zoning district line following the centerline of said vacated street or way shall not be affected by such vacation.

- B. When any permit as provided for in this article is issued which affects any zoning district in a substantial way, such permit shall be coded and noted on the zoning district map by the City Administrator so as to clearly indicate the use so permitted which may not otherwise be clearly evident from the map or text of this article.
- C. When uses in a zoning district are listed as both permitted and conditionally permitted uses, or when any other conflict appears in this article with respect to permitted uses within a zoning district, the more restrictive portion shall be applied.
- D. Determination of similar uses. Any landowner may request a determination that a use not included in any district of this article is substantially similar to a use classified as permitted, conditionally permitted or other specially permitted in the zoning district in which the property is located. An application for such a determination shall be filed with the City Administrator who shall refer it to the Planning Commission. The Planning Commission shall review the application in accordance with this article and the comprehensive plan and forward a recommendation of approval or denial to the City Council along with an explanation for taking such action. If the City Council determines the use is substantially similar to a use included in these regulations, such use shall thereafter be an allowable use whenever the similar listed use is authorized.

Sec. 12-134. Uses.⁹⁰

Uses in the various districts shall be as follows:

P	=	Permitted use
A	=	Permitted accessory use
A/C	=	Permitted accessory, conditional use permit required ⁹¹
C	=	Conditionally Permitted Use
I	=	Interim Use Permit ⁹²
ADMIN	=	Administrative Permit Required
N	=	Not allowed
*	=	Except as otherwise noted

	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Agricultural, rural	P	P	N	N	P	P	P	N
Agricultural, suburban	P	P	N	N	P	P	P	N
Airports, airstrips, heliports	N	N	N	N	N	N	N	N
Animal impounding facility	N	N	N	N	P	P	C ⁹³	N
Animals, commercial training	C	N	N	N	C	C	C ⁹⁴	N
Antennae or towers over 35 feet in height	C	C	N	N	C	C	N	N
Archery range, commercial	N	N	N	N	N	N	N	N
Armories, convention halls and similar uses	N	N	N	N	N	N	N	N
Auto/car wash	N	N	N	N	N	N	N	N

⁹⁰ Ord 1997-15, 1/19/99, MS added; Code 1982, § 301.604; Res. No. 1997-16, § 15, 6-17-97

⁹¹ Ordinance 06-2009, 6/16/2009

⁹² Ordinance 06-2009, 6/16/2009

⁹³ Ordinance 06-2009, 6/16/2009

⁹⁴ Ordinance 06-2009, 6/16/2009

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	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Auto reduction yard, junkyard	N	N	N	N	N	N	N	N
Auto repair	N	N	N	N	N	N	N	N
Automobile service station	N	N	N	N	N	N	N	N
Barbershop, beauty shops	N	N	N	C	N	N	N	N
Bed and breakfast (see Sec. 12-222)	C	C	C	C	N	N	N	N
Blacktop or crushing equipment for highway construction (temporary use only)	C	N	N	N	C	C	I ⁹⁵	N
Boarders (no more than two)	Deleted							
Boat dock (non-commercial)	A	A	A	N	N	N	N	N
Boat, boat trailer, marine sales	N	N	N	C	N	N	N	A
Boat, boat trailer and marine storage and repair, enclosed or screened	N	N	N	N	N	N	N	C
Broadcasting studio	N	N	N	C	N	N	C	N
Cafes and restaurants	N	N	N	C	N	N	N	N
Campgrounds	N	N	N	N	N	N	N	N
Cemeteries	C	N	N	N	N	N	N	N
Churches	C	C	C	C	N	N	N	N
Clear cutting	See Section 12-218							
*Clubs or lodges	N	N	N	N	N	N	N	N
*Commercial recreation	N	N	N	N	N	N	N	N
Commercial schools	N	N	N	C	N	N	N	N
Disposal, solid & liquid waste	N	N	N	C	N	N	N	N
Domestic pets	A	A	A	A	N	N	A/C ⁹⁶	N
Drive-in business	N	N	N	N	N	N	N	N
Duplex	N	C	N	N	N	N	N	N
Essential services, government uses	N	C	C	C	C	C	C	N
Essential services, public utility	C	C	C	C	C	C	C	N
Explosives, manufacture, storage or use	N	N	N	N	N	N	N	N
Exterior sales and storage	N	N	N	N	N	N	N	N
Exterior sales and storage (wholesale only)	N	N	N	N	C	C	N	N
Farm, see agriculture								
Farm equipment sales	N	N	N	N	N	N	N	N
Farmers market	N	N	P	P	N	N	N	N

⁹⁵ Ordinance 06-2009, 6/16/2009

⁹⁶ Ordinance 06-2009, 6/16/2009

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	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Feedlots, commercial (see sec. 12-188)	C	N	N	N	N	N	N	N
Fences	See Section 12-190							
Flammable gases and liquids, business distribution	N	N	N	N	N	N	N	N
Forests	P	P	P	P	P	P	C ⁹⁷	N
Fuel sales (wholesale and storage)	N	N	N	N	N	N	N	N
Funeral Homes	N	N	N	N	N	N	N	N
Garage, private	A	A	A	A	A	A	A/C ⁹⁸	N
Garage, repair (commercial)	N	N	N	N	N	N	N	N
Garage, storage (commercial)	N	N	N	N	N	N	N	N
Golf courses	C	N	N	N	N	N	N	N
Grading	See Sections 12-215, 12-216							
Greenhouses (commercial production only)	C	N	N	N	N	N	N	N
Guest house ⁹⁹	Deleted							
Gun clubs	N	N	N	N	N	N	N	N
Gun ranges	N	N	N	N	N	N	N	N
Home occupation	P	P	P	P	N	N	P	N
Hotel (see Section 12-223)	N	N	N	C	<u>N</u>	<u>N</u>	<u>N</u>	N
Institutional housing	N	C	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Junkyard	N	N	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Kennels, private (see Section 12-55)	C	C	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Kennels, commercial (see Section 12-55)	N	N	N	N	<u>N</u>	<u>N</u>	<u>N</u>	N
Land reclamation	See Section 12-215							
Live entertainment or dancing ¹⁰⁰	Deleted							
Lodging room (not more than two)	A	C	C	N	N	N	N	N
Manufacturing, heavy	N	N	N	N	N	N	N	N
Manufacturing, light industrial (maximum height of 25 feet in I-1C) ¹⁰¹	N	N	N	N	C	C	C	N
Marina (including boat rental) ¹⁰²	N	N	N	C	N	N	N	N
Medical uses	N	N	N	C	N	N	N	N

⁹⁷ Ord 06-2009, 6/16/2009

⁹⁸ Ord 06-2009, 6/16/2009

⁹⁹ Ord 1997-21, 12/15/98

¹⁰⁰ Ord 1997-21, 12/15/98

¹⁰¹ Ord 1997-10, 5/19/98

¹⁰² Ord 1997-21, 12/15/98

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	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Mining, sand and gravel	N	N	N	N	N	N	N	N
Mobile home court/park	N	N	N	N	N	N	N	N
Motel	N	N	N	N	N	N	N	N
Multiple family dwellings (three or more units)	N	N	N	N	N	N	N	N
Nature center (public and private)	C	C	N	N	N	N	C	N
Nursery, retail sale of plants ¹⁰³	S	N	N	N	C	C	N	N
Nursery, wholesale growing of plants	P	C	N	N	N	N	N	N
Nursery and garden supplies (wholesale)	C	N	N	N	C	C	C ¹⁰⁴	N
Offices (Maximum Height of 35 feet in I-1C) ¹⁰⁵	N	N	C	C	C ¹⁰⁶	C ¹⁰⁷	C	N
Offices, accessory	N	N	N	C	C	C	C	A
Off-street loading	N	N	N	A	A	A	A/C ¹⁰⁸	A
Off-street parking	A	A	A	A	A	A	A/C ¹⁰⁹	N
Photo/art studio	N	N	N	C	N	N	N	N
Race tracks	N	N	N	N	N	N	N	N
*Recreation areas (commercial)	N	N	N	N	N	N	N	N
Recreation equipment storage (private)	A	A	A	A	N	N	A	N
Reduction or processing of refuse, trash and garbage	N	N	N	N	N	N	N	N
Rental of cars, trailers, campers, trucks and similar equipment	N	N	N	N	N	N	N	N
Repair garage (commercial)	N	N	N	N	N	N	N	N
Repair shop (small appliances)	N	N	N	C	N	N	N	N
Research (see Section 12-55)	C	C	N	N	C	C	C	N
Research, agricultural	C	C	N	N	C	C	C	N
	NO CUP FOR HOMES							
Residential, multiple family	N	N	N	N	N	N	N	N
Residential, single-family detached ¹¹⁰	P	P	P	P	N	N	P	C
Residential waterfront uses	A	A	A	A	N	N	A	N

¹⁰³ Ord 1997-21, 12/15/98

¹⁰⁴ Ord 06-2009, 6/16/2009

¹⁰⁵ Ord 1997-10, 5/19/98; Ord 1997-21, 12/15/98; Ord 06-2009, 6/16/2009

¹⁰⁶ Ord 09-2008, 9/16/2008

¹⁰⁷ Ord 09-2008, 9/16/2008

¹⁰⁸ Ord 06-2009, 6/16/2009

¹⁰⁹ Ord 06-2009, 6/16/2009

¹¹⁰ Ord 1997-21, 12/15/1998

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	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Resorts	N	N	N	N	N	N	N	N
Rest or nursing home	N	N	N	N	N	N	N	N
Retail business	N	N	N	C	N	N	N	N
Retail business, accessory to office ¹¹¹	N	N	N	C	C	C	C	N
Retail sales of agricultural supplies	C	N	N	N	N	N	N	N
Riding stable, private (minimum of 20 acres)	C	C	N	N	N	N	C	N
Riding stable, commercial (minimum of 20 acres) ¹¹²	C	N	N	N	N	N	N	N
Sales, open lot and outdoor	N	N	N	N	N	N	N	N
Sales, seasonal agricultural ¹¹³	N	N	N	C	N	N	N	N
Schools, private	N	N	N	N	N	N	N	N
Schools, public	N	C	N	N	N	N	C	N
Service station	N	N	N	N	N	N	N	N
Shopping center ¹¹⁴	Deleted							
Signs	See Section 12-210							
Solar, accessory to principal use ¹¹⁵	A	A	A	A	A	A	A	A
Stand, private roadside (notify neighbor for CUP) ¹¹⁶	ADMIN	C	N	C	N	N	C	N
Storage, highway during construction	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	ADMIN	I ¹¹⁷	N
Storage, enclosed or screened principal use	N	N	N	N	C	C	N	A
Storage, open principal use	N	N	N	N	N	N	N	N
Storage, enclosed, accessory to a principal use	A	A	A	A	A	A	C ¹¹⁸	N
Storage, not accessory to permitted principal use	N	N	N	N	N	N	N	N
Storage, underground, flammable materials accessory to agricultural or residential use	C	C	C	C	N	N	N ¹¹⁹	N
Studio, arts or crafts	C	C	C	C	N	N	C	N
	Agricultural	Rural Residential	VHS-Residential	VHS-Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service

¹¹¹ Ord 06-2009, 6/16/2009

¹¹² Ord 02-2014, 5/20/2014

¹¹³ Ord 1997-12, 8/18/1998

¹¹⁴ Ord 1997-21, 12/15/1998

¹¹⁵ Ord 03-2015, 8/18/2015

¹¹⁶ Ord 1997-21, 12/15/1998

¹¹⁷ Ord 06-2009, 6/16/2009

¹¹⁸ Ord 06-2009, 6/16/2009

¹¹⁹ Ord 06-2009, 6/16/2009

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	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
Supper Club ¹²⁰	N	N	N	C	N	N	N	N
Swimming pool (commercial)	N	N	N	N	N	N	N	N
Swimming pool (private)	ADMIN	ADMIN	ADMIN	ADMIN	N	N	ADMIN	N
Taverns and bars ¹²¹	N	N	N	C	N	N	N	N
Tennis courts, private	ADMIN	ADMIN	ADMIN	ADMIN	N	N	C ¹²²	N
Terminal, transportation/motor freight	N	N	N	N	C	C	N	N
Theater	N	N	N	C	N	N	N	N
Theater, drive-in	N	N	N	N	N	N	N	N
Townhouses	N	N	N	N	N	N	N	N
Trailer Parks	N	N	N	N	N	N	N	N
Truck and auto service station	N	N	N	N	N	N	N	N
Temporary farm dwelling (mobile home)	ADMIN	ADMIN	N	N	N	N	N ¹²³	N
Transportation School ¹²⁴	N	N	N	N	N	C	N	N
Used auto parts	N	N	N	N	N	N	N	N
Utility substation	C	C	C	C	C	C	C	C
Vegetative cutting	See Section 12-218							
Vehicle sales	N	N	N	N	N	N	N	N
Veterinary clinic	C	N	N	N	N	N	N	N
Warehousing	N	N	N	N	C ¹²⁵	C ¹²⁶	C ¹²⁷	N
Waterfront uses (commercial)	N	N	N	C	N	N	N	N
Waterfront uses (residential)	A	A	A	A	N	N	A	N
Wholesale business	N	N	N	N	C ¹²⁸	C ¹²⁹	C ¹³⁰	N

Sec. 12-135. Floodplain overlay district.¹³¹

A. Permitted uses. As permitted and regulated under the City's floodplain ordinance, article V of this chapter.

B. Accessory uses. As permitted and regulated under the City's floodplain ordinance, article V of this chapter.

Sec. 12-136. Shoreland management overlay district.¹³²

¹²⁰ Ord 1997-12, 8/18/1998

¹²¹ Ord 12-21, 12/15/1998

¹²² Ord 06-2009, 6/16/2009

¹²³ Ord 06-2009, 6/16/2009

¹²⁴ Ord 07-2008, 4/18/2008

¹²⁵ Ord 09-2008, 9/16/2008

¹²⁶ Ord 09-2008, 9/16/2008

¹²⁷ Ord 06-2009, 6/16/2009

¹²⁸ Ord 09-2008, 9/16/2008

¹²⁹ Ord 09-2008, 9/16/2008

¹³⁰ Ord 06-2009, 6/16/2009

¹³¹ Code 1982, § 301.605

¹³² Code 1982, § 301.606

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- A. *Permitted uses.* As permitted and regulated under the City's shoreland management ordinance, article III of this chapter.
- B. *Accessory uses.* As permitted and regulated under the City's shoreland management ordinance, article III of this chapter.

Sec. 12-137. Conservancy overlay district.¹³³

- A. *Purpose.* To manage areas unsuitable for development due to wet soils, steep slopes, or large areas of exposed bedrock, and manage areas of unique natural and biological characteristics in accordance with compatible uses. These are areas which may be unsuitable for development due to wet soils, steep slopes, heavy vegetation, scenic views, bedrock formations, and/or other physical features of unique natural and biological characteristics in need of proper land use management. Such areas shall also include the following:
 - 1. Elements of the local hydrological system in need of protection and preservation;
 - 2. Protection of open space as designated in the comprehensive plan; and
 - 3. Critical areas and state management areas as designated by federal and state actions and regulations related to the Lower St. Croix River.
- B. *Permitted and accessory uses.* All uses permitted in the basic zoning district and other regulating overlay districts shall require an Administrative Permit.
- C. *Conditionally Permitted Uses.* All uses allowed by Conditional Use Permit in the basic zoning district and other regulating overlay districts shall require a Conditional Use Permit.
- D. *Designation of conservancy areas.* Any land area within the City which meets the criteria listed in Subsection (A) of this section, whether or not so designated on the official zoning map shall be considered conservancy for permit purposes. Areas designated on the official zoning map as conservancy may be excluded by action of the City Council if it is demonstrated conservancy conditions do not exist.

Sec. 12-138. St. Croix River overlay district.¹³⁴

- A. *Permitted uses.* As permitted and regulated under the City's Lower St. Croix River bluffland and shoreland management ordinance, article IV of this chapter.
- B. *Accessory uses.* As permitted and regulated under the City's Lower St. Croix River bluffland and shoreland management ordinance, article IV of this chapter.

Sec. 12-139. Agricultural preserves (AP) overlay district.¹³⁵

- A. *Purpose.* To preserve, promote, maintain and enhance the use of land for agricultural purposes where it is necessary and desirable because of high quality soils, availability of water and/or highly productive agricultural capability and to protect such land from encroachment by nonagricultural uses, structures or activities.
- B. *Permitted uses and structures.* The following uses shall be permitted by right:
 - 1. Commercial agricultural and horticulture;
 - 2. Farm buildings;
 - 3. Farm drainage and irrigation systems;
 - 4. Forestry and tree farms;
 - 5. One farm dwelling on each farm;
 - 6. Up to three dwelling units on each quarter-quarter (1/4-1/4) section to include at most one farm dwelling and two non-farm dwellings, or three non-farm dwellings provided:

¹³³ Code 1982, § 301.607

¹³⁴ Code 1982, § 301.608

¹³⁵ Code 1982, § 301.609; Ord 01-2012, §12-139, 1/17/2012

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- a. The landowner has enough acres in AP so that the overall density does not exceed the one dwelling unit per quarter-quarter (1/4-1/4) section limitation of the agricultural preserve, and agrees to covenant that the acreage necessary to maintain that density may not be subdivided, or developed with additional dwelling units, until the encumbered acres have been removed from the agricultural preserve, and in conformance with the provisions of Section 12-140;
 - b. Each dwelling unit shall be located on a separately owned parcel which shall be at least five acres in size and entirely within one quarter-quarter (1/4-1/4) section;
 - c. This procedure is subject to the regulations of the subdivision ordinance and Section 12-140(K). When the parcels on which the dwelling units are located are created by a minor subdivision, at most three parcels may be created in each quarter-quarter (1/4-1/4) section;
 - d. Each parcel on which a dwelling unit is located must have at least 300 feet of frontage along an existing, improved public street;
 - e. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the street by the following distances depending upon street type:
 - i. Local street 300 feet
 - ii. Collector street 300 feet
 - iii. Minor arterial 500 feet
 - iv. Minimum distance from the intersection of two
or more of the above 100 feet
 - f. The dwelling shall be set back at least 105 feet from the nearest existing or planned street centerline and be separated at least 500 feet from the nearest farm building;
 7. Historic sites; and
 8. Other uses as permitted by Section 12-134 for the zoning district.
- C. *Permitted accessory uses and structures.* The following accessory uses and structures shall be permitted: Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures, and those accessory uses permitted by Section 12-134 for the zoning district.
- D. *Conditionally Permitted Uses.* The following Conditionally Permitted Uses may be approved by the City Council provided that the provisions and requirements of this article are fully met:
1. Feedlots and poultry facilities;
 2. Home occupations;
 3. Agricultural service establishments incidental to the principal agricultural use of the property primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis including corn shelling, hay baling, thrashing, sorting, grading and packing of fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; fruit picking; grain cleaning; harvesting and plowing; farm equipment service and repair; veterinary services; and the boarding and training of horses.
- E. *Other Specially Permitted Uses.* Other uses as allowed by Administrative Permit by Section 12-134 for the zoning district.
- F. *Standards for granting Conditional Use Permits.* No Conditional Use Permit shall be issued by the City Council unless following review and written findings it determines that the proposed use satisfies the following conditions and the conditions set forth in Section 12-78:
1. Non-farm structures shall be sited on a separately surveyed and described parcel;
 2. The use shall not be one to which the noise, odor, dust or chemical residues of commercial agriculture may have an adverse impact on or result in the agricultural use being designated a nuisance or trespass;
 3. All agricultural service establishments shall be located at least 300 feet from any driveway affording access to a farm dwelling or field and at least 500 feet from any single family dwelling;
 4. All agricultural service establishments shall be screened on the perimeter of the establishment by a solid fence, wall or natural vegetation of not less than six feet in height;
 5. An agricultural service establishment shall be incidental and necessary to the conduct of agriculture within the agricultural zoning district; and Public utility and service structures shall be located and constructed at such places and in such manner that they will not interfere with the conduct of agriculture by limiting or interfering with the access of fields or the effectiveness and efficiency of the farmer and farm equipment including crop spraying aircraft.

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- G. *Prohibited uses and structures.* All other uses and structures which are not specifically permitted by right or by Conditional Use Permit shall be prohibited in the AP overlay district.
- H. *Minimum lot sizes, yard requirements and structure spacings.*
1. *Lot size.* Five acres with a minimum buildable area of 2 ½ acres, not to exceed a density of one dwelling unit for each quarter-quarter (1/4-1/4) section of at least 35 acres.
 2. *Yard requirements.* As regulated by Section 12-132 for A and AP zoning districts of this article.
 3. *Structure spacing.* Non-farm uses shall be separated at least 500 feet from the nearest farm building.
- I. *Conservation.* Land within an agricultural preserve shall be farmed and otherwise managed according to sound soil and water conservation management practices. Management practices which are not sound shall be any use of the land resulting in wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota technical guide.
- J. *Complaint.* Upon receipt of a written complaint stating the conditions or land management practices which are believed to be in violation of Subsection (H) of this section, the City Council shall consult with the county soil conservation district. The district shall determine the average soil loss in tons per acre per year for each field cited in the complaint according to the universal soil loss equation and the wind erosion equation, and shall return to the City Council a report showing the average soil loss in tons per acre per year for each field and a list of alternative practices that the landowner can use to reduce the soil loss to the allowed limit mentioned in Subsection (H) of this section. After consultation, and if in the judgment of the City Council the land is not being managed properly as required herein, the City Council shall adopt a resolution to this effect and shall seek corrective measures from the owner. At the request of the landowner, the district shall assist in the planning, design and application of the practices selected to reduce the soil loss to an acceptable level and shall give such landowners a high priority for providing technical and cost share assistance.
- K. *Corrective measures; penalty.* Any owner who fails to implement corrective measures to the satisfaction of the City Council according to Subsections (H) and (I) of this section within one year of notice shall be subject to a fine of not more than \$1,000.00. The City Council may recover the penalty by a civil action in a court of competent jurisdiction. Costs incurred by the City in the enforcement of this section may be charged to the property owner. Charges not timely paid may be placed on the tax rolls and collected as a special assessment against the property.
- L. *Subdivision.* Subdivision of property within an AP overlay district shall be subject to the following regulations in addition to the regulations of the subdivision ordinance:
1. To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. Such land includes areas of nonprime agricultural soils as defined in the comprehensive plan, areas with slopes of 13 percent and greater, areas of heavy natural vegetation, and areas unsuitable for agricultural production because of size.
 2. Each lot less than one quarter-quarter (1/4-1/4) section in area created for nonagricultural use shall be approved by the City Council prior to recording of the deed at the county recorder's office. No building or zoning use permit shall be issued for any lot created after the adoption date of the ordinance from which this article was derived unless the City Council has approved the property description and certificate of survey for such lot.
 3. No lot shall be created that results in a need for the construction of any public or private street or access easement.
 4. Each lot created shall have a minimum buildable area of 2 ½ acres. Buildable area shall be defined as land having a slope of 13 percent or less and enough soils suitable for the installation of two on-site sewage treatment systems.
 5. No lot shall be created that might be adversely affected by adjacent agricultural operations in terms of noise, dust, odors or other activities that might result in the agricultural operation being designated a nuisance or trespass.
- M. *Eligibility.* To be eligible for agricultural preserve certification, the landowner must submit a rezoning application to the City Administrator requesting that his land be zoned at a density of one dwelling unit for each quarter-quarter (1/4-1/4) section and prove the land meets the following criteria:

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1. The land shall be designated as being agricultural on the comprehensive plan land use map;
2. The land comprises 40 or more contiguous acres or a minimum of 35 acres provided the land is a single quarter-quarter (1/4-1/4) parcel and the amount less than 40 acres is due to a public right-of-way or a perturbation in the rectangular survey system resulting in a quarter-quarter (1/4-1/4) section of less than 40 acres; noncontiguous parcels may be included to achieve the minimum acreage requirement provided that each parcel is at least ten acres in size and provided that all separate parcels are farmed together as a unit;
3. The land comprises not less than 20 acres, is surrounded by eligible land on not less than two sides, consists predominately of class I, II, or III soils according to the land capability classification system of the county soil conservation district, is considered by the City Council to be an essential part of the agricultural district, and was a parcel of record prior to January 1, 1980, or was an agricultural preserve prior to becoming a separate parcel of at least 20 acres.

N. *Application for rezoning.* An application for rezoning shall be processed as regulated by Section 12-80.

O. *Forms.* An application for agricultural preserve certification shall consist of the following completed forms to be submitted to the City Administrator:

1. Application for initiating placement of land into a metropolitan agricultural preserve;
2. Affidavit of authority; and
3. Metropolitan agricultural preserves restrictive covenant.

These forms may be obtained from the Zoning Administrator or City Clerk.

P. *Review.* The City Administrator shall submit the application for agricultural preserve certification to the Planning Commission for its review and recommendation at its next regularly scheduled meeting following submission of the application to the City Administrator.

Q. *Recommendation.* The Planning Commission shall review the application and forward a recommendation of certification or denial to the City Council at its next regularly scheduled meeting following the Planning Commission's meeting at which the review was conducted.

R. *Granting or denial of certification.* The City Council shall either grant or deny the application for certification. If certification is granted, the City Council shall submit the original application to the county recorder for proper recording within five days, and copies to:

1. the county auditor, county assessor, county soil conservation district; and
2. the Metropolitan Council.

S. *Fee.* The City Council may require an application fee not to exceed \$50.00 to defray administrative costs.

T. *Termination of an agricultural preserve.* An agricultural preserve shall continue until either the landowner or the City Council initiates expiration as follows:

1. A landowner may initiate expiration by submitting a notice initiating expiration of a metropolitan agricultural preserve, available from the City Administrator to the City Council. The applicant may rescind the notice and expiration at any time during the first two years following the notice.
2. The City Council may initiate expiration by notifying the landowner by registered letter provided the comprehensive plan and zoning for the land have been officially amended so that the land is no longer planned and zoned for long term agriculture, evidenced by a maximum residential density permitting more than one dwelling unit on each quarter-quarter (1/4-1/4) section. The notice shall describe the property for which the expiration is desired and shall state the date of expiration which shall be at least eight years from the date of the notice. Upon receipt of the notice provided in this section, or upon notice served by the City Council as provided in this section, the City Council shall notify the county recorder, county auditor, county assessor, county soil conservation district and the metropolitan Council of the date of expiration. An agricultural preserve shall not expire any sooner than eight years after the date of the notice initiating expiration of a metropolitan agricultural preserve.

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- U. *Expiration.* Expiration of an agricultural preserve initiated by the landowner shall not automatically result in a rezoning of the property to a greater density.
- V. *Early termination.* Termination of an agricultural preserve earlier than a date derived through application as regulated in this section shall be permitted only if the governor declares a public emergency pursuant to a petition submitted to him by either the landowner or the City Council.

Sec. 12-140. Agricultural (A) zoning district.¹³⁶

- A. *Purpose.* The A zoning district is intended to recognize land in the City that is primarily rural in character with the primary land use being farming or agriculture. This district is designated in recognition of the comprehensive plan that states the City's policy to retain prime agricultural land and to encourage the continuance of commercial farming. While non-farm housing is a permitted use as regulated herein, the primary purpose of the district is to preserve and protect land for commercial farming.
- B. *Permitted uses and structures.* The following uses shall be permitted:
 - 1. Single Family Residential housing at a density of one dwelling unit per 10 acres provided that: (Total Acreage / 10 = allowed density) All numbers shall be rounded down. Each dwelling unit shall be located on a separately owned parcel which shall be at least five acres in area;
 - 2. The parcel on which a dwelling unit is located shall have at least 300 feet of frontage along an existing, improved public street;
 - 3. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the street by the following distances depending upon street type:
 - a. Local street..... 300 feet
 - b. Collector street..... 300 feet
 - c. Minor arterial..... 500 feet
 - d. Minimum distance from the intersection of two or more of the above..... 100 feet
 - 4. The dwelling shall be set back at least 105 feet from the nearest existing or planned street centerline and be separated at least 500 feet from the nearest farm building;
 - 5. 20 acres are required to subdivide a property, of which two or more parcels may qualify if 100% of all of the land owners apply.
 - 6. Other uses as permitted by Section 12-134 for the zoning district.
- C. *Accessory uses and structures.* Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures, and those accessory uses permitted by Section 12-134 for the zoning district shall be permitted.
- D. *Conditionally Permitted Uses.* The following Conditionally Permitted Uses may be approved by the City Council provided that the provisions and requirements of this article are fully met:
 - 1. Agricultural service establishments incidental to the principal agricultural use of the property primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis including corn shelling, hay baling, thrashing, sorting, grading and packing of fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; fruit picking, grain cleaning; harvesting and plowing; farm equipment service and repair; veterinary services; and the boarding and training of horses; and
 - 2. Those uses listed as being allowed by Conditional Use Permit in the A zoning district in Section 12-134.
- E. *Standards for granting Conditional Use Permits.* No Conditional Use Permit shall be issued by the City Council unless following review and written findings it determines that the proposed use satisfies the conditions set forth in Sections 12-78 and 12-139.
- F. *Prohibited uses and structures.* All other uses and structures which are not specifically permitted or permitted by Conditional Use Permit shall be prohibited.

¹³⁶ Code 1982, § 301.610, Ord 7-2006, 8/15/2006; Ord 01-2012, §12-140, 1/17/2012

G. *Minimum lot sizes, yard requirements and structure spacings:*

1. Lot size. Five acres with a minimum buildable area of 2 ½ acres, not to exceed a density of three dwelling units in any quarter-quarter (1/4-1/4) section.
2. Yard requirements. As regulated by Section 12-132.
3. Structure spacing. Non-farm uses shall be separated at least 500 feet from the nearest farm building.

H. *Nuisances.*

1. In areas where agricultural and nonagricultural uses interface, the nonagricultural developer is to be responsible for any desired screening or fencing that does not interfere with the agricultural use.
2. No condition such as animals, dust, noise or odors shall be considered a nuisance if doing so would inhibit normal agricultural practices and operations unless a condition must be controlled to protect the health and safety of the public.

I. *Development of substandard parcels.*

1. In areas where the maximum density of three dwelling units for each quarter-quarter (1/4-1/4) section was exceeded at the time the ordinance from which this article was derived was adopted, individual lots of record before the adoption of such ordinance that are at least five acres in size, and have at least 300 feet of frontage on an existing, improved public street and have enough soils suitable for the installation of two on-site sewage treatment systems may be developed in accordance with the regulations for the RR zoning district contained in Section 12-132.
2. Existing dwelling units in areas where the maximum density of three dwelling units for each quarter-quarter (1/4-1/4) section was exceeded prior to the adoption date of the ordinance from which this article was derived shall not be considered nonconforming uses and may be altered or otherwise developed in accordance with the regulations for the RR zoning district contained in Section 12-132.

J. *Conservation.* Land within the A zoning district shall be farmed and otherwise managed according to sound soil and water conservation management practices.

K. *Subdivision.* Subdivision of property within the A zoning district shall be subject to the following regulations in addition to the regulations of the subdivision ordinance, article VI of this chapter:

1. To the extent feasible, each lot created for a non-farm use shall be located on land not suitable for agricultural use. Such land includes areas of nonprime agricultural soils as defined in the comprehensive plan, areas with slopes of 13 percent and greater, areas of heavy natural vegetation, and areas unsuitable for agricultural production because of size.
2. Each lot less than 20 acres in size shall be approved by the City Council prior to recording the deed at the county recorder's office. No building or zoning use permit shall be issued for any lot created after the adoption date of the ordinance from which this article was derived unless the City Council has approved the property description and certificate of survey.
3. No lot shall be created that results in a need for the construction of any public or private street or access easement.
4. Each lot shall have a minimum buildable area of 2 ½ acres.

L. *Rezoning.* In accordance with the comprehensive plan, the City Council shall consider rezoning requests to allow a greater residential density for property within this district only for those properties adjacent to or contiguous with the RR zoning district.

Sec. 12-141. Rural residential (RR) zoning district.¹³⁷

- A. *Purpose.* The RR district is intended to be primarily a residential district, but which may also accommodate agriculture and related and accessory uses. This is the general area of the City which is not primarily suited to farming due to soil conditions, slope, tree cover, rock formations and other physical features as indicated in the comprehensive plan and is better suited to non-farm housing and related accessory uses.

¹³⁷ Code 1982, § 301.611

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- B. *Permitted uses.* As permitted and regulated under Section 12-134.
- C. *Accessory uses.* As permitted and regulated under Section 12-134.
- D. *Minimum lot requirements.* Each lot shall be a minimum of five acres in size with a minimum buildable area of 2 1/2 acres except as provided for in this article. Due to limiting environmental conditions, some lots may have to be larger than five acres to assure that those lots will have the minimum required buildable area.

Sec. 12-142. Village historic site, residential (VHS-R) and commercial (VHS-C) zoning districts.¹³⁸

- A. *Purpose.* These districts are intended to recognize the unique and special environmental qualities and problems of the old village. The purposes of these regulations are as follows:
 - 1. To assure that all uses, new development and construction, building and site rehabilitation, remodeling, property access, parking and pedestrian circulation are in conformity with the comprehensive plan;
 - 2. To develop and maintain these districts as an economic, social, and physical asset to the entire city;
 - 3. To recognize the unique and special problems of the old village not common to new commercial and residential areas;
 - 4. To provide an opportunity for all landowners and tenants to be aware of and comment upon all significant activities and development which may affect the well-being of the area; and
 - 5. To promote the preservation and protection of historic structures to enhance the environmental quality of neighborhoods and to establish and improve property values.
- B. *Permitted uses.* In addition to those uses permitted by Section 12-134, the following uses shall be permitted: Interior remodeling, except those requiring structural alterations and those allowing a more intensive use of the structure.
- C. *Other Specially Permitted Uses.* The following uses shall require an Administrative permit:¹³⁹
 - 1. All public improvements;
 - 2. Signs as required in Section 12-210;
 - 3. All new construction requiring a building permit and exceeding \$500.00 in assessed value as determined by the building official; and
 - 4. All exterior construction, alteration, remodeling or restoration of any structure or sign, except normal maintenance or repairs.
- D. *Standards for granting administrative permits.* An administrative permit shall be issued by the Zoning Administrator if he determines the proposed use satisfies the following conditions and the conditions set forth in Section 12-79:
 - 1. All work should be of a character and quality that maintains the distinguishing features of the building and the environment. The removal or alteration of distinctive architectural features should be avoided as should alterations that have no historical basis and which seek to create an earlier appearance. The restoration of altered original features, if documentable, is encouraged.
 - 2. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 - 3. Deteriorated architectural features should be repaired rather than replaced whenever possible. In the event of replacement, new materials should match the original in composition, design including consideration of proportion, texture and detail, color and overall appearance.
 - 4. New additions or alterations to structures should be constructed in such a manner that if such conditions or alterations were to be removed in the future, the form and integrity of the original structure would be unimpaired.

¹³⁸ Ord 02-2008, 1/9/2008

¹³⁹ Ord 01-2014, 5/20/2014

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5. The impact of alterations or additions on individual buildings as well as on the surrounding streetscape will be considered; major alterations to buildings which occupy a corner lot or are otherwise prominently sited should be avoided.
6. New construction should be compatible with the historic and architectural character of the district.
7. The City design guidelines that are adopted by the City Council as Section 12-1621 et seq., provide additional guidance for administrative permit design review.

E. *Special uses.*

1. As permitted by Section 12-134; and
2. As regulated by the standards contained in Section 12-78 and Subsection (D) of this section.

F. *The design review committee.*

1. *Established; members.* The design review committee is a function of the Heritage Preservation Commission described in 2-152.
2. *Determination of level of review; minor work.* The Zoning Administrator may apply the guidelines in Subsection (D) of this section and Section 12-1621 et seq., and, if the work is conforming, approve permits for the following types of work without convening the design review committee:
 - a. Reroofing.
 - b. Repair or replacement of porches, windows, siding, trim and doors if new materials match existing.
 - c. Masonry finishing and chimney reconstruction.
3. *Determination of level of review; major work.* The Zoning Administrator shall convene the design review committee review of all other types of work, including:
 - a. Roof alterations and skylights.
 - b. Alterations to the front or side elevations visible from the public street including alterations to windows, siding, entries, and trim.
 - c. Additions.
 - d. New construction, including garages.
 - e. Demolition.

G. *Exemptions.*

1. Properties abutting Pennington Avenue and west of Pennington Avenue are exempt from Subsection (D) of this section and Section 12-1621 et seq.
2. Residences constructed after 1940 and before January 1, 1995, shall be exempt from
3. Subsection (D) of this section and Section 12-1621 et seq., unless the proposed work
4. involves additions, the construction of new accessory buildings or demolition.

Sec. 12-143. Light Industrial (I-1A), Light Industrial (I-1B), and Light Industrial (I-1C).¹⁴⁰

- A. *Purpose.* The purpose of these districts is to preserve land along major traffic routes to be used by industrial uses that will provide a sound tax base for the City.
- B. *Permitted Uses.* As permitted and regulated in Section 12-134.
- C. *Accessory uses.* As permitted and regulated in Section 12-134.
- D. *Architectural Standards.*¹⁴¹ In the industrial zone structures must be of fire resistive construction and exterior surfaces of all structures must be faced with brick, stone, architectural concrete (block), precast concrete, or glass of earthtones or other tones or colors in harmony with the natural characteristics of the area in which it is constructed and approved by the design review committee, acting as the architectural standards committee.
- E. *Landscaping Standards.* All properties zoned Light Industrial shall be landscaped in accordance with the following:

¹⁴⁰ Ord 11-2007, 8/7/2007

¹⁴¹ Ord 07-2009, 6/16/2009

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1. The minimum number of major or overstory trees on any given site shall be as indicated below. These are the minimum substantial plantings, in addition to other understory trees, shrubs, flowers, and ground cover deemed appropriate for a complete quality landscape treatment of the site.
 - a. Industrial sites shall contain at a minimum the greater of one (1) tree per 500 square feet of gross building floor area, or one (1) tree per 25 lineal feet of site perimeter.
 2. Minimum Size of Plantings. Required trees and shrubs shall be of the following minimum planting size:
 - a. Deciduous trees-Three (3) inches in diameter as measured 6 inches above ground.
 - b. Coniferous trees- Six (6) feet in height.
 - c. Shrubs- Shrubs used for screening shall be in #5 containers.
 3. Sodding and Ground Cover. All areas not otherwise improved in accordance with approved site plans shall be planted with tough native materials where appropriate to reduce the amount of watering required and to increase permeability of the site as approved by the Planning Commission and City Council.
 4. Buffer Yard. Where any business or industrial use (structure, parking or storage) is adjacent to property zoned for residential use, that business or industry shall provide a landscaped buffer yard a minimum of 100 feet in width along the boundary of the residential property to provide screening. Where the use is adjacent to property zoned for industrial use, a landscaped buffer yard a minimum of 50 feet in width shall be required. The screening required in this section shall provide 95 percent opacity year round.
 - a. Plant Units Required. Within the landscaped buffer yard, a minimum of two hundred (200) plant units shall be required for each one hundred (100) feet of property line. Credit for plant units shall be assigned as follows:

<u>Vegetation</u>	<u>Plant Unit Value</u>
Evergreen Trees	15
Deciduous Trees	10
Evergreen/Coniferous Shrubs	5
Shrubs/Bushes	1
 5. Landscape Guarantee. An agreement will be signed between the City and the owner which states that in exchange for issuance of a building permit, the owner will construct, install, and maintain all items shown on the approved plan and that he/she will replace and/or correct any deficiencies or defaults that occur in the plan for a period of two complete growing seasons subsequent to the installation of the landscaping plan. A landscaping performance bond will be submitted along with the agreement at this time.
 - a. If after two growing seasons all the commitments are met, then the bond and contract agreement are released to the applicant or property owner.
 - b. According to ordinance, the developer/owner is responsible for permanently maintaining the landscaping in a neat and proper fashion.
 6. All landscaping shall comply with Sections 12-191 and 12-192.
- F. *Lighting.* The following shall apply to all Industrial properties in addition to the requirements set forth in Section 12-195.
1. Any light fixture intended to illuminate the site shall contain a cutoff which directs the light at an angle of ninety (90) degrees or less. Exposure of the light source shall not be permitted in view of adjacent property or public right-of-way.
 2. The maximum height above the ground grade for light fixtures mounted on a pole is twenty-five (25 feet).
 3. No light sources shall be located on the roof unless said light enhances the architectural features of the building and is approved by the Zoning Administrator.

Sec. 12-144. Marine Services (MS) zoning district.¹⁴²

- A. *Purpose.* The purpose of this district is to complement the river accesses and marinas by providing storage and repair of boats and boat trailers.
- B. *Permitted uses.* As provided in Section 12-134.
- C. *Accessory uses.* As provided in Section 12-134.

¹⁴² Ord 1997-15, 1/19/99

- D. *Architectural standards.* In harmony with the natural characteristics of the area in which it is constructed and approved by the Design Review Committee, acting as the architectural standards committee.

Sec. 12-145. Preservation and Land Conservation Development (PLCD).¹⁴³

- A. *Purpose.* To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the City, as provided in Article XII of Chapter 12.
- B. *Permitted Uses.* As permitted and regulated under Chapter 12.

Secs. 12-146-12-184. Reserved.¹⁴⁴

DIVISION 4. DESIGN AND PERFORMANCE STANDARDS

Sec. 12-185. Performance standards.¹⁴⁵

All uses, buildings and structures permitted pursuant to this article shall conform to the performance and design standards set forth in this section; such standards are determined to be the minimum standards necessary to comply with the intent and purposes of this article as set forth in this division.

Sec. 12-186. Principal building.¹⁴⁶

- A. There shall be no more than one residential dwelling unit on any one parcel of land described in Section 12-132, unless otherwise allowed in the Zoning Code.¹⁴⁷
- B. No cellar, garage, recreational vehicle or trailer, basement with unfinished exterior above or accessory building shall be used at any time as a dwelling unit.
- C. There shall be no more than two dwelling units in any principal residential structure as permitted by this article.
- D. Principal buildings with more than one use, in which one of those uses is a dwelling unit shall require a Conditional Use Permit.
- E. All principal buildings hereafter erected on unplatted land shall be so placed as to avoid obstruction of future street or utility extensions and shall be so placed as to permit reasonably anticipated future subdivisions and land use.
- F. All principal buildings shall meet or exceed the minimum standards of the state building code, the state uniform fire code, the department of health, the pollution control agency and the sanitary sewer disposal ordinance, Article IX of this chapter, except that manufactured homes shall meet or exceed the requirements of the state manufactured home building code in lieu of the state building code.
- G. The keeping of animals except for domesticated pets inside of a dwelling unit shall be prohibited.
- H. All existing residential principal buildings with non-winterized construction or inadequate nonconforming year-round on-site sewage treatment systems as described in this article and the sanitary sewer disposal ordinance, Article IX of this chapter, shall be considered a seasonal principal building. No building permit shall be issued for the improvement of a seasonal principal building to a continuous year-round (365 days)

¹⁴³ Ord 06-2008, 4/15/2008

¹⁴⁴ Ord 1997-41, 6/4/01

¹⁴⁵ Code 1982, § 301.700

¹⁴⁶ Code 1982, § 301.702

¹⁴⁷ Ord 05-2013, 3/19/2013

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habitable dwelling unit unless the existing building conforms or the building after such improvement (including septic system) will conform with all the requirements of the City's ordinances and any applicable state requirements.

- I. Any alterations, modifications or enlargements of an existing seasonal principal building for the purpose of continuing the seasonal use shall require a Conditional Use Permit.
- J. In all districts where single-family detached dwellings are permitted, the following standards shall apply for single-family detached dwellings, including manufactured homes, except that these standards shall not apply to manufactured homes permitted by Section 12-213(B), (C), (D) or (E):
 - 1. Minimum width. The minimum width of the main portion of the structure shall not be less than 20 feet, as measured across the narrowest portion.
 - 2. Foundations. All dwellings shall be placed on a permanent foundation extending below the frostline and anchored to resist overturning, uplift and sliding in compliance with the state building code.
- K. The size of a garage attached to a principal residential building shall not have a foundation that exceeds 2,000 square feet.¹⁴⁸

Sec. 12-187. Types of accessory buildings.¹⁴⁹

- A. Storage or tool sheds; detached residential accessory buildings; detached domesticated farm animal buildings on residential parcels; and agricultural buildings on rural farms. Such accessory buildings are defined as follows:
 - 1. *Storage or tool sheds.* A one-story accessory building of less than 160 square feet gross area with a maximum roof height of 12 feet. No door or other access opening in a storage or tool shed shall exceed 28 square feet in area.
 - 2. *Detached residential accessory building.* A one-story accessory building used or intended for the storage of motor-driven passenger vehicles, hobby tools, garden equipment, workshop equipment and so forth. The total area of all accessory buildings shall not exceed 2,500 square feet, subject to the acreage requirements in Subsection (B) of this section. (Also see Paragraph (4) of this section.)¹⁵⁰
 - 3. *Detached domesticated farm animal building on residential parcels.* A one-story accessory building used or intended for the shelter of domestic farm animals and/or related feed or other farm animal supportive materials on any nonagricultural parcel as defined in Section 12-55. The total area of all accessory building shall not exceed 2,500 square feet, subject to the acreage requirements in Subsection (B) of this section. Such buildings shall be regulated by Subsections (B), (M), and (N) of this section.
 - 4. *Agricultural buildings on rural farms.* An accessory building used or intended for use on a parcel on which rural agriculture, as defined in Section 12-55, is the principal use, and shall be subject to the following restrictions: No accessory building, except for agricultural buildings on rural farms, shall be more than 20 feet in height, nor have a roof pitch which exceeds that of the principal building. On any lot of less than five acres no accessory building shall exceed the square footage of the principal structure.¹⁵¹
 - 5. *Existing agricultural buildings* at the time of a subdivision are exempt from the limits on the maximum square footage and on the total number of accessory buildings imposed by Subsection (B) of this section. Any additions to or expansions of accessory buildings shall thereafter be subject to requirements of this section with the existing agricultural buildings being included in both the square footage and building number calculations.
 - 6. *Temporary Accessory Dwelling Unit.* A temporary dwelling unit that is accessory to a residential principal structure, and that can be easily removed. A temporary accessory dwelling unit requires an administrative permit. Such permit shall expire 180 days from the date of issuance, unless there is specific ordinance language setting out a longer timeframe, and may be renewed for one additional 180 day period.¹⁵²

¹⁴⁸ Ord 03-2012, § 12-186 (K), 4/17/2012

¹⁴⁹ Code 1982, § 301.703

¹⁵⁰ Ord 05-2013, 3/19/2013

¹⁵¹ Ord 05-2015, 3/19/2013

¹⁵² Ord 05-2013, 3/19/2013

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B. Permitted uses of accessory buildings.¹⁵³

	A	R	VHS
Storage or tool shed:			
Permit required	Building	Building	Building
Maximum square footage	160	160	160
Maximum roof height	12 feet	12 feet	12 feet
Maximum door opening area	28 sq. ft.	28 sq. ft.	28 sq. ft.
Maximum number of stories	One story*	One story*	One story*

Detached residential accessory building:			
Permit required	Admin & Bldg.	Admin & Bldg.	Bldg.
Maximum square footage	***	***	720
Maximum number of stories	One story*	One story*	One story*

Detached domesticated farm animal building on residential parcels:			
Permit required	Admin & Bldg.	Admin & Bldg.	N****
Maximum square footage	***	***	
Maximum number of stories	One story*	One story*	

Agricultural building on rural farm of:			
More than 10 but less than 20 acres:			
Permit required	Admin	Admin	N
Maximum square footage	***	***	
20 or more acres:			
Permit required	Admin/Farm Site Plan	Admin/Farm Site Plan	N

* See Ch. 11, Sec. 1102 of the International Building Code (IBC)

***Total number of accessory buildings possible:

1 or 2 on parcels of 10-20 acres not to exceed a total of 2,500 square feet; 2 on parcels less than 10 acres not to exceed 2,000 square feet. Residential parcels shall be regulated by the RR district. Permit shall be recorded. No Admin permit required on buildings 1,000 s.f. or less.	1 or 2 on parcels of 5 and more ac. Not to exceed a total of 2,000 square feet; 1 on parcels less than 5 acres not to exceed 1,000 square feet. Agricultural parcels shall be regulated by the A and AP districts. Permit shall be recorded. No Admin permit required on buildings 1,000 s.f. or less.	1 not to exceed 720 square feet.
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**** See Section 12-230 regulating the keeping of chickens on parcels less than five (5) acres.¹⁵⁴

C. A storage or tool shed as defined in this section may be placed on any lot in addition to the permitted type and number of accessory buildings.

¹⁵³ Ord 09-2010, § 12-187(B), 9/21/10

¹⁵⁴ Ord 05-2013, 3/19/2013

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- D. No accessory building shall be constructed nor accessory use located on a lot until a building permit has been issued for the principal building to which it is accessory.
- E. A building shall be considered an integral part of the principal building if it is located six feet or less from the principal building. The exterior design and color shall be the same as that of the principal building and the height shall not exceed the height of the principal structure.
- F. No accessory building in a Commercial or Industrial Zoning District shall exceed the height of the principal building.
- G. No accessory building shall be located nearer the front lot line than the principal building on that lot except by Administrative Permit as provided for herein:
 - 1. The proposed accessory building shall be located on a lot of five or more acres; and
 - 2. The proposed accessory building shall be screened from the public street and neighboring parcels by existing vegetation that provides year-round screening and exceeds the height of the accessory building unless the accessory building is of the same design and material as the principal building and is located 25 feet or less from the principal building, provided all other required setbacks are met.
- H. Accessory structures located on lake or stream frontage lots may be located between the public street and the principal structure as regulated by the shoreland management ordinance and Subsection (G) of this section.
- I. Houseboats and buildings used as shelters from which to fish during open water months are to be considered accessory structures for purposes of this article. All houseboats used within the City limits for a period of 30 consecutive days or more shall require a Administrative Permit. Such permit shall show the owner, owner's address, boat license number, whether the boat is to be used as a seasonal residence, and if so, for what period of time during the year, type of sanitary sewage facility, water supply and site plan showing the method of access to the public street. Each houseboat shall have one off-street parking space within 400 feet of the docking of such houseboat. No houseboat shall be used as a permanent residence.
- J. Ice fishing houses stored on parcels of land during summer months shall be considered an accessory storage building equivalent to a storage or tool shed as defined in Subsection (A)(1) of this section. Ice fishing houses shall meet the size limitations of Subsection (B)(1) of this section and all other provisions of this article, except Subsection (K) of this section.
- K. All accessory buildings shall be securely anchored. Those over 100 square feet shall have a foundation, concrete slab or footings. Nonagricultural accessory buildings larger than 100 square feet shall require a building permit regardless of improvement value. Roof and wind loads shall conform to requirements as contained in the building code.
- L. All accessory buildings shall meet the minimum required setbacks contained in Section 12-132(A) for the zoning district in which it is to be located.
- M. An Administrative Permit is required for approval and construction of a detached domesticated farm animal building on a residential parcel of at least five acres and up to 20 acres. No detached domesticated farm animal building shall be permitted on any lot less than five acres. An application for an Administrative Permit shall include the following:
 - 1. A dimensioned site plan or aerial photograph illustrating within 500 feet of the proposed structure: All adjacent property owners' lot lines, houses, septic systems, fences, wells, animal buildings and other structures and feed storage areas; all wet marshy areas, drainageways, and shorelines; all proposed grazing areas on the site; all new utility extensions and driveway access to the proposed building; and all manure storage and disposal areas.
 - 2. A written soil inventory and evaluation from the county soil conservation district.
 - 3. Details of the building floor plan, elevations, materials and color of structure.
- N. Performance standards for detached agricultural buildings and domesticated farm animal buildings shall include the following:

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1. *Setbacks.* All domestic farm animal buildings, feedlots and manure storage areas shall be setback as follows:

Natural or Manmade Feature	Minimum Horizontal Setback
a. Any property line:	100 feet
b. Any existing well or residential structure on the same parcel:	50 feet
c. Any existing well or residential structure on adjacent or nearby parcels:	200 feet
d. Any body of seasonal or year-round surface water, stream, or drainageway	200 feet

2. *Slopes.* Such building, feedlot or manure storage area shall not be placed on slopes that exceed 13 percent.
3. *Marsh or wetland.* No marsh or wetland (as established by the predominant wetland vegetation and/or soils) shall be utilized for placement of the proposed structure, feedlot or grazing area.

- O. The size of a lean-to shall not exceed 40% of the size of the enclosed portion of the building to which it is attached.¹⁵⁵

Sec. 12-188. Livestock.¹⁵⁶

- A. *Prohibition of manure deposition without safeguards.* No manure or livestock waste shall be deposited, stored, kept or allowed to remain in or upon any storage site or feedlot without reasonable safeguards adequate to prevent the escape or movement of such manure or waste or a solution thereof from the site that may result in pollution of any public waters or any health hazard. No manure shall be stored within 100 feet of any property line.
- B. *Pollution control agency standard minimum requirements.* All regulations imposed by the state pollution control agency relating to keeping of livestock shall be adhered to, and such regulations shall be considered the minimum safeguard necessary to prevent pollution of public waters or creation of health hazards. New livestock feedlots, poultry lots and other animal lots are prohibited within the following areas:
 1. Within 1,000 feet of the ordinary high water mark of any lake, pond or flowage; or within 300 feet of the landward extent of a floodplain;
 2. Within 1,000 feet of the boundary of a public park; and
 3. Within one-half mile of the nearest point to a concentration of ten or more private non-farm residences.
- C. *Permit required.* No feedlot or manure storage site shall be maintained unless a permit therefore¹⁵⁷ has first been issued by the state pollution control agency and a Conditional Use Permit has been issued by the City Council. The application for a permit by the owner or other person responsible for a feedlot or manure storage site shall be accompanied by plans showing the features and method of operation and construction and existing or proposed safeguards or disposal systems. The City Council may thereafter issue a Conditional Use Permit therefore¹⁵⁸ upon such conditions as it shall prescribe to prevent pollution of any public water or creation of health hazard.
- D. *Inadequate safeguards.* In case the Zoning Administrator shall find that any manure is stored or kept on any feedlot or storage site without a safeguard, or that any existing safeguard is inadequate, he may order the owner or other responsible person to immediately remove the manure from the feedlot or storage site and refrain from further storage or keeping of any manure thereat unless and until an adequate safeguard is provided as herein prescribed.
- E. *Notice concerning loss.* It shall be the duty of the owner of a feedlot or manure storage site or other responsible person in charge thereof to notify immediately the Zoning Administrator of any loss of stored manure by accident or otherwise when such loss of stored manure involves a substantial amount that would

¹⁵⁵ Ord 05-2013, 3/19/2013

¹⁵⁶ Code 1982, § 301.704; **Cross reference(s)**--Animals, Ch. 6.

¹⁵⁷ Amendment 02-2009, 4/21/2009

¹⁵⁸ Amendment 02-2009, 4/21/2009

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be likely to enter any waters of the City. Such notice shall be by telephone or other comparable means and shall be made without delay after the discovery of the loss. The notification shall include the location and nature of the loss and such other pertinent information as may be available at the time.

- F. *Acreage requirement.*¹⁵⁹ Chickens can be kept on parcels less than five acres as regulated by Section 12-230. A parcel of at least five acres, with a minimum of two acres of natural pasture having a slope of less than 12 percent is required for the keeping of horses, cattle or other domestic farm animals. The allowable density shall be one animal or its equivalent on each two acres of such land. This requirement does not apply to parcels of 40 acres or more or to parcels of less than 40 acres that are part of a larger agricultural operation. In a situation where land is leased, the parcel on which the residence occupied by the owner of the land is located must be at least five acres, and the leased land must meet the above requirements and the following conditions:
1. Leased land shall be contiguous to the parcel upon which the owner of the horses resides.
 2. Farm animals shall have access to the leased land from the residence parcel.
 3. Leased land shall be grazable and fenced.
 4. Any lease agreement shall be reviewed annually by the City and shall be filed with the City. If the lease is cancelled, the City shall be notified and the applicant shall come into compliance within 30 days.
- G. *Animal unit.* On parcels of five acres or more one animal unit or its equivalent is permitted **on each two acres** of natural pasture land having a slope of less than 12 percent and with the ability to feed grazing animals. For the purposes of these regulations, the following animal unit equivalents apply:

<u><i>Animal</i></u>	<u><i>Animal Units</i></u>
1 Slaughter steer or heifer	1.0
1 Horse	1.0
1 Mature dairy cow	1.4
1 Swine over 55 pounds	0.4
1 Sheep	0.1
1 Turkey	0.018
1 Chicken	0.01
1 Duck	0.2

- H. *Determination of conditions.* Prior to the issuance of a building permit for a residential parcel, the Zoning Administrator shall determine if there are any existing nonconforming animal conditions. If such conditions exist, building permits shall not be issued until the property is brought into conformance with the regulations of this article.
- I. *Administrative Permit.* An Administrative Permit shall be required whenever there are more than five horses on a parcel less than 20 acres owned in fee simple.
- J. *Fencing.* All land used as pasture shall be appropriately fenced to contain animals.
- K. *Barns.* A barn located on a five acre lot where contiguous land is leased shall not house more than four horses during the winter months. During the remainder of the year, horses shall be kept on leased land as well as on the parcel held in fee title.
- L. *Nuisance.* All livestock shall be managed in a humane manner and maintained in such a manner as not to create a nuisance.
- M. *Keeping Chickens on Parcels Less Than 5 Acres.*¹⁶⁰
1. Permit required. No person shall, on any lot less than 5 acres anywhere in the city keep, harbor, or

¹⁵⁹ Ord 04-2011, 11/15/2011

¹⁶⁰ Ord 03-2011, § 12-230, 11/15/2011; Ord 07-2013, 6/18/2013

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maintain care, custody, or control over any chicken, without obtaining a permit issued by the City of Afton.

- a. The permit shall be subject to all terms and conditions of this Section and any additional conditions deemed necessary by the City to protect the public health, safety, and welfare. The necessary permit may be obtained from the City Administrator's Office.
2. Application. Included with the information required prior to issuance of the permit must be a scaled diagram that indicates the lot size, the number of chickens, the location of any chicken coop and run, which includes the distance from dwelling units on the parcel and abutting properties and the approximate size of the chicken coop and run. If the coop exceeds 200 square feet a building permit will be required.
3. Permit fee. A one-time fee of \$20 will be charged for each permit and the fee may be amended by resolution.
4. Number allowed. For parcels that are less than one-half (1/2) acre the maximum number of chickens is five (5). For every additional one-half (1/2) acre of land an additional five (5) chickens can be kept. On parcels greater than four and one-half (4 1/2) acres and less than five (5) acres up to 45 chickens are allowed.
5. Confinement standards. Every person who owns, controls, keeps, maintains or harbors hen chickens by permit must keep them confined on the premises at all times. If confinement is in a chicken coop or chicken run the following standards apply:
 - a. Where more than five chickens are being kept the coop and run shall be at least 25 feet from any residential structure, wells, and any other premises or wells on any adjacent lots.
 - b. All chicken coops and runs must be located within the rear yard subject to the required setbacks for the principal building.
 - c. Chicken feed must be kept in metal, predator proof containers.
6. Conditions and inspection. No person who owns, controls, keeps, maintains or harbors hen chickens shall permit the premises where the hen chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition or to permit the premises to be in such condition that noxious odors are carried to adjacent public or private property.
7. Prohibited uses. The following uses are not allowed as they pertain to this Section:
 - a. Roosters
 - b. Breeding, raising or slaughtering of chickens for a commercial purpose
 - c. Odors, solid matter or noise of such quality or quantity as to be reasonably objectionable at any point beyond the lot line of the site on which the use is located.
8. Public nuisance. Failure to comply with this ordinance constitutes a public nuisance and is subject to the revocation of the permit, issuance of fines and assessment of costs related to ensure compliance with this section.

Sec. 12-189. Agricultural operations.¹⁶¹

- A. All agricultural operations in existence upon the effective date of the ordinance from which this article was derived shall be a permitted use. However, all regulations contained herein and other city ordinances in effect shall apply to all changes of the agricultural operation that will cause all or part of the area to become more intensively used or more residential in character. Setback and other regulations shall apply to agricultural operations just as they do to residential developments. Any agricultural building erected on a farm shall require a farm site plan permit (See Section 12-86) and shall meet the provisions of this article.
- B. Rural agricultural operations may occur on parcels of ten or more contiguous acres in A and AP zoning districts. Rural agricultural operations may include the production of farm crops such as vegetables, fruit trees, grain and other crops and their storage on the farm, as well as for the raising thereon of farm poultry, domestic pets and domestic farm animals.

¹⁶¹ Code 1982, § 301.705; **Cross reference(s)**--Animals, Ch. 6.

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- C. Rural agricultural operations may include necessary accessory uses for treating, storing or producing retail farm market products; provided however, that the operation of any such accessory uses shall be secondary to that of the primary agricultural activity.
- D. Suburban agricultural operations may occur on parcels of less than ten contiguous acres in A, AP or RR zoning districts. Suburban agricultural operations may include the production of crops such as fruit trees, shrubs, plants and flowers, vegetables and domestic pets, provided such produce is intended for the use of the residents on the property or sale away from the property, or for temporary seasonal produce sales that require no roadside sales stand.
- E. Suburban agricultural operations shall not include the raising of domestic farm animals on parcels of less than five acres, roadside sales stands, processing or packaging operations or similar uses.
- F. The City Council may require any farm operation not located in an A or AP zoning district to secure a Conditional Use Permit to continue such operations upon the following conditions:
 - a. A nuisance on a farm is determined to be detrimental to the health and safety of adjoining property owners; and
 - b. The farm operations are so intensive as to constitute an industrial type use consisting of the compounding, processing and packaging of products for wholesale or retail trade and further, that such operations may tend to become a permanent industrial type operation that cannot be terminated as can a normal farming operation. Excessive trucking operations shall be considered an intensive use.

Sec. 12-190. Fences.¹⁶²

- A. Fences may be permitted in all yards subject to the following:
 - 1. Solid walls in excess of four feet above adjacent ground grades shall be prohibited;
 - 2. That side of the fence considered to be the face (finished side as opposed to structural supports) shall face abutting property;
 - 3. Fences over six feet in height from the finished grade shall require a building permit in addition to any other required permits;
 - 4. No fences shall be permitted on public rights-of-way; and
 - 5. All fences shall be maintained and kept in good repair.
- B. Fences may be permitted along property lines subject to the following:
 - 1. Fences may be placed along property lines provided no physical damage of any kind results to abutting property;
 - 2. Fences on commercial and industrial property may be erected on the lot line to a height of six feet; to a height of eight feet with a security arm for barbed wire;
 - 3. Fences along any lot lines or within any building setback lines as defined in Section 12-55 may be a maximum of six feet in height, except as provided in Subsection (B)(5) of this section. All fences parallel to any road shall be set back a minimum of 20 feet from the road right-of-way for line-of-sight safety reasons. All fences which exceed four feet in height and which are parallel to any road shall be screened in accordance with Subsection (8) of this section.
 - 4. Should the rear lot line of a lot be common with the side lot line of an abutting lot, that portion of the rear lot line equal to the required front yard of the abutting lot shall not be fenced to a height of more than four feet;
 - 5. All fences on lake lots shall be set back a minimum of 20 feet from the ordinary high water mark. Fences along interior lot lines between the 20-foot setback from the ordinary high water mark and the required building setback from the ordinary high water mark shall not exceed four feet in height;
 - 6. Fences located within the buildable area of a lot or eight feet or more from the rear lot line may be up to eight feet in height;
 - 7. Where the property line is not clearly defined, a certificate of survey may be required by the Zoning Administrator to establish the property line;

¹⁶² Code 1982, § 301.706

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8. The screening required in this section shall consist of forms of landscaping (plant materials) so as to block direct visual access to the fence from the street.

Sec. 12-191. Screening.¹⁶³

- A. Screening shall be required in all zoning districts where:
 1. Any off-street parking area contains more than four parking spaces and is within 30 feet of an adjoining residential zoning district; 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 zoning district.
- B. Where any business or industrial use (structure, parking or storage) is adjacent to property zoned for residential use, that business or industry shall provide screening along the boundary of the residential property. Screening shall also be provided where a business, parking lot or industry is across the street from a residential zoning district, but not on the side of a business or industry considered to be the front.
- C. All exterior storage shall be screened except materials and equipment currently being used for construction on the premises and exterior storage on farms, except those required to do so on an individual basis by action of the City Council.
- D. The screening required in this section shall mean the installation of a solid wooden fence of a required height, and/or plantings, and/or berms. All plantings used as screening shall be a minimum of six feet in height when planted, shall be of a variety that the soil and water conservation district recommends as suitable for the site, and shall be a variety which is fast growing and non-deciduous. In addition, earth berms shall be considered to be screening. Any berm required as a condition of a Conditional Use Permit shall be high enough to prevent visual access to the structure it is screening. Berms may be required to have plantings, watering systems to support life for the plants, fences, or other screening. All screening of whatever type shall provide 90 percent screening of the structure or facility being screened.

Sec. 12-192. Landscaping.¹⁶⁴

- A. Landscaping on a lot shall consist of a finished grade and a soil retention cover such as sod, seed and mulch, plantings or as may be required by the Zoning Administrator to protect the soil and aesthetic values on the lot and adjacent property.
- B. In all zoning districts, all developed uses shall provide landscaping from the edge of the street pavement to the street right-of-way lines. This landscaped yard shall be kept clear of all structures, exterior storage and off-street parking.
- C. No trees or shrubs shall be planted within a public right-of-way except as provided in Subsection (D) of this section.
- D. The grassy area on the public right-of-way adjoining the traveled portion of the City streets in the old village is designated as a boulevard and as such may be planted and maintained by the abutting property owner subject to the following conditions:
 1. Nothing shall be planted or allowed to grow in such a manner as to obscure signage or impede vision on the traveled portion of the street.
 2. All boulevards shall be maintained by the abutting property owner in a neat and orderly fashion consistent with the atmosphere of the old village.
 3. The City shall remain the sole owner of the boulevard area.
 4. The City reserves the right to enter on the boulevard for any lawful purpose including, but not limited to, mowing, trimming, snow plowing, or any street or utility maintenance.

¹⁶³ Code 1982, § 301.707

¹⁶⁴ Code 1982, § 301.708

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5. The City reserves the right to reclaim any boulevard area and remove any plantings if, in the sole discretion of the City, the boulevard area is needed for any lawful purpose including, but not limited to, street widening, parking, or utility easements.

- E. Landscaping shall be provided and maintained on all required front and side yards on all developed lots except where pavement or crushed stone is used for walkways or driveways.

Sec. 12-193. Reasonable maintenance required.¹⁶⁵

In all zoning districts, all structures, landscaping and fences shall be reasonably maintained so as to avoid health and safety hazards and prevent a degradation in the value of adjacent property.

Sec. 12-194. Exterior storage.¹⁶⁶

- A. In all zoning districts except for the uses permitted in the MS District, only personal property of the property owner or tenant shall be stored on the premises. Such property shall be stored within a building or fully screened so as not to be visible from adjoining properties and public places and streets, except for the following: Laundry drying and recreational equipment, construction and landscaping materials and equipment currently (within a period of 12 months) being used on the premises, agricultural equipment and materials if these are used or intended for use on the premises; off-street parking of licensed passenger automobiles, pick-up trucks, recreational vehicles, boats and unoccupied trailers are permissible if stored more than ten feet from any property line, except as regulated by Subsection (B) of this section. Existing uses shall comply with this provision within 12 months following enactment of the ordinance from which this article was derived.¹⁶⁷
- B. In the VHS-R and VHS-C zoning districts, only one of the following items may be stored on any residential premises: Recreational vehicle, boat, unoccupied trailer or similar item. Such an item may not be more than 25 feet in length and shall be stored behind the front building line of the principal structure at least ten feet from each lot line.
- C. In nonresidential zoning districts, exterior storage of personal property may be permitted by Conditional Use Permit provided any such property is so stored for purposes relating to a use of the property permitted by this article and will not be contrary to the intent and purposes of this article.¹⁶⁸
- D. In all zoning districts, all waste, refuse or garbage shall be kept in an enclosed building or properly contained in a container designed for such purposes. The owner of vacant land shall be responsible for keeping such land free of refuse and noxious weeds. Existing uses shall comply with this provision within 90 days following enactment of the ordinance from which this article was derived.
- E. Unlicensed passenger vehicles and trucks shall not be parked on any property for a period exceeding seven days.
- F. 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 article shall be considered to be refuse.

Sec. 12-195. Lighting, lighting fixtures and glare.¹⁶⁹

- A. In all zoning districts, any lighting used to illuminate an off-street parking area, or other structure or area, shall be arranged to deflect light away from any adjoining residential zoning districts or from the public streets. Direct or sky-reflected glare, whether from floodlights or from high temperature processes such as combustion or welding shall not be directed onto any adjoining property. The source of light shall be hooded or controlled so as not to light adjacent property. Bare light bulbs shall not be permitted in view of adjacent property or public rights-of-way. No light or combination of lights that cast light on a public street shall

¹⁶⁵ Code 1982, § 301.709

¹⁶⁶ Code 1982, § 301.710

¹⁶⁷ Ord 1997-19, 4/20/99

¹⁶⁸ Ord 1997-19, 4/20/99

¹⁶⁹ Code 1982, § 301.712

exceed one footcandle meter reading as measured from the centerline of said street nor shall any light or combination of lights that cast light on residential property exceed 0.4 footcandles.

B. Lighting standards shall not exceed 35 feet in height.

Sec. 12-196. Parking.¹⁷⁰

A. General provisions.

1. Existing off-street parking spaces and loading spaces upon the effective date of the ordinance from which this article was derived shall not be reduced in number unless such number exceeds the requirements set forth herein for a similar use.
2. Benches in places of public assembly, in stadiums, sport arenas, churches and other places of public assembly, in which patrons or spectators occupy benches, pews or other similar seating facilities, each 22 inches of such seating shall be counted as one seat for the purpose of determining requirements for off-street parking facilities under this article.
3. 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. Parking lots that separate vehicles based on size may be designed with parking spaces less than or greater than nine feet wide and 18 feet deep depending upon the size of the vehicle as long as adequate space is provided for easy and safe ingress and egress for the vehicle. Each parking space shall be served by an access aisle at least 24 feet in width. Parking spaces for semi-trailers shall be a minimum length of 50 feet. Proposed reductions in or additions to the parking space size must be submitted in a dimensioned site plan with the size of vehicle to use parking spaces indicated to the Zoning Administrator for review and approval. Signs specifying the vehicle size to use the parking space may be required by the Zoning Administrator. Parking spaces for vehicles used by disabled persons shall not be less than 12 feet wide and 20 feet long.
4. Off-street parking facilities accessory to residential uses shall be utilized solely for the parking of passenger vehicles and/or one truck not to exceed 9,000 pounds gross capacity for each dwelling unit. Under no circumstances shall required parking facilities accessory to residential structures be used for the storage of commercial vehicles or for the parking of vehicles belonging to the employees, owners, tenants or customers of nearby business or manufacturing establishments, provided however, that the parking of not more than three commercial vehicles in a single garage not to exceed 1,500 square feet in gross area may be permitted by a Conditional Use Permit if parking the vehicles is accessory to a residential use by the owner of the vehicles and the business in which they are used. Such Conditional Use Permit may be issued only for a parcel not less than 20 acres in size, zoned A or AP and conditioned upon no exterior storage, no on-site sales and no office open to the public. The permit shall state that the Council reserves the right to revoke the permit at such time as the use becomes incompatible with adjacent land uses or surrounding parcels become platted. Typical uses which may be eligible for a Conditional Use Permit include contractor, electrician, painter, plumber, roofer, and septic system pumper and servicer.
5. Off-street parking facilities for a combination of mixed buildings, structures or uses may be provided collectively in any marine services, commercial or I zoning district in which separate parking facilities for each separate building, structure or use would be required, provided that the total number of spaces provided shall equal the sum of the separate requirements of each use during any peak hour parking period.¹⁷¹
6. When required accessory off-street parking facilities are provided elsewhere than on the lot the principal use served is located, they shall be in the same ownership or control, either by deed or long-term lease, as the property occupied by such principal use, the owner of the principal use shall file a recordable document with the county recorder requiring the owner and his heirs and assigns to maintain the required number of off-street parking spaces during the existence of such principal use, and shall be located within the same zoning district as the principal use.
7. Required off-street parking space in any zoning district shall not be utilized for open storage of goods, or for the storage of vehicles that are inoperable, for sale or for rent.

B. Design and maintenance of off-street parking areas.

¹⁷⁰ Cross reference(s)--Parking generally, § 22-56 et seq. Code 1982, § 301.713

¹⁷¹ Ord 1997-19, 4/20/99

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1. Parking areas shall be designed so as to provide adequate means of access to a public alley or street. In no case shall a driveway exceed 32 feet in width unless an Administrative Permit has been obtained approving the larger width. Driveway access shall be so located as to cause the least interference with traffic movement. There shall be only one driveway access for each residential lot, except by Administrative Permit.
 2. When the calculation of the number of off-street parking spaces required results in a fraction, such fraction shall require a full space.
 3. 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.
 4. Off-street parking areas shall be improved with a durable and dustless surface. Such areas shall be so graded and drained as to dispose of all surface water accumulation within the parking area. Durable and dustless surface may include crushed rock and similar treatment for parking accessory to residential structures; all other uses shall utilize asphalt, concrete or a reasonable substitute surface as approved by the City Engineer. All surfacing must be completed prior to occupancy of the structure unless other arrangements have been made with the City. Parking areas for less than three vehicles shall be exempt.
 5. Any lighting used to illuminate an off-street parking area shall be so arranged so it is not directly visible from the adjoining property and in a downward vertical direction.
 6. All open off-street parking areas designed to have head-in parking along the property line shall provide a bumper curb or guard not less than ten feet from the property line. When such area is for six or more spaces, screening not over four feet in height shall be erected along the street side of the parking area and grass or planting shall occupy the space between the screening and the street.
 7. Each parking space in a lot with a nonporous surface shall be delineated with four-inch wide stripes painted the entire length of the parking space.
 8. Parking bays that do not head into a lawn area at least six feet wide and parking bays designed with angle parking of less than 90 degrees shall be defined with vertical markers at each end of the bay. Vertical markers may include concrete curbing, bermed planting islands with six-inch concrete curbing, lighting standards, sign posts, bumper guards at least three feet high or other devices approved by the Zoning Administrator.
 9. When a required off-street parking space for six or more cars is located adjacent to a residential lot, a fence or screen not less than four feet in height shall be erected along the side and/or rear of the parking area adjacent to the residential lot or zoning district.
 10. All accessory off-street parking facilities required herein shall be located as follows:
 - a. Spaces accessory to one- and two-family dwellings shall be on the same lot as the principal use served;
 - b. Spaces accessory to uses located in a marine services, commercial or I zoning district shall be within 800 feet of a main entrance to the principal building served and in the same zoning district. Parking as required by the building code for disabled persons shall be provided;¹⁷²
 - c. There shall be no off-street parking space within ten feet of any street right-of-way;
 - d. No off-street parking area shall be located closer than ten feet from any lot line, except when adjoining an existing parking area on the adjacent lot in any marine services, commercial and I zoning districts; and,¹⁷³
 - e. No parking space shall be closer than ten feet to any building.
 11. All off-street parking spaces shall have access from driveways and not directly from the public street.
 12. Fire access lanes shall be provided as required by the building code or fire code.
 13. It shall be the joint responsibility of the operator and the owner of the principal use or building to reasonably maintain the parking space, accessways, landscaping and required fences.
- C. *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 residential zoning district except when loading, unloading or rendering a service, or as provided in Subsection (A)(4) of this section.
- D. *Parking limited.* Both off-street and on-street parking in residential areas shall be limited to the use of the residents and their guests, except for short-term parking of six or fewer hours.

¹⁷² Ord 1997-19, 4/20/99

¹⁷³ Ord 1997-19, 4/20/99

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E. *Reduction of number.* Off-street parking spaces shall not be reduced in number unless such number exceeds the requirements set forth herein.¹⁷⁴

F. *Number required.* Off-street parking spaces required shall be as follows:

One- and two-family residences	2 spaces per dwelling unit but not to exceed 4 per unit.
Churches and other places of assembly	1 space for each 3 seats or for each 5 feet of pew length, based upon maximum design capacity.
Offices	1 space for each 200 square feet gross floor area.
Schools: Elementary and junior high	3 spaces for each classroom.
Schools: High school through college	1 space for each 4 students based upon design capacity plus 3 additional spaces for each classroom.
Sanitarium, convalescent home rest home, nursing home or institution	1 space for each 6 beds, for which accommodations are offered, plus 1 space for each 2 employees on maximum shift.
Retail store	1 space for each 150 square feet of gross floor area.
Restaurants, cafes, bars, taverns or supper clubs	1 space for each 2 1/2 seats, based on capacity design.
Medical or dental clinic	6 spaces per doctor or dentist.
Industrial, warehouse, storage, whole-sale, furniture store, handling of bulk goods	1 space for each 2 employees on maximum shift or 1 for each 2,000 square feet of gross floor area, whichever is larger.
Marinas	1 1/2 spaces per slip plus 1 space per employee and a minimum of 20 12-foot by 25-foot trailer stalls.
Uses not specifically noted	As determined by the Planning Commission.

Sec. 12-197. Off-street loading areas.¹⁷⁵

- 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 zoning district, unless within a building. Loading berths shall be located to the rear of the structure.
- B. *Size.* Unless otherwise specified in this article, a required loading berth shall be not less than 12 feet in width, 50 feet in length and 14 feet in height, exclusive of aisle and maneuvering space.
- C. *Access.* Each required loading berth shall be located with appropriate means of vehicular access to a street or public alley in a manner that 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 building.
- E. *Accessory use.* Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this article shall not be used for the storage of goods, inoperable vehicles or be included as a part of the space requirements to meet the off-street parking area.
- F. *Deliveries.* Any structure erected or substantially altered for a use that 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.

Sec. 12-198. Traffic control.¹⁷⁶

¹⁷⁴ Ord 02-2008, 1/9/2008

¹⁷⁵ Code 1982, § 301.714

¹⁷⁶ **Cross reference(s)**--Traffic and vehicles, Ch. 22.; Code 1982, § 301.715

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- A. The traffic generated by any use shall be controlled so as to prevent:
 - 1. Congestion of 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. Traffic into and out of commercial and industrial areas shall in all cases be forward moving with no backing into streets.
- C. On any corner lot, nothing shall be placed or allowed to grow in such a manner as to impede vision between a height of 21/2 and ten feet above the centerline grades of the intersecting streets within 15 feet of the intersecting street right-of-way lines. This restriction shall also apply to the planting of crops and to yard grades that result in elevations that impede vision within 15 feet of any intersecting right-of-way lines.

Sec. 12-199. Fallout shelters.¹⁷⁷

Fallout shelters may be permitted in any district subject to the yard regulations of the zoning district. Such shelters may contain or be contained in other structures or be constructed separately, and in addition to shelter use, may be used for any use permitted in the district, subject to the district regulations on such use.

Sec. 12-200. Guesthouses.¹⁷⁸

Guesthouses shall not be permitted in any zoning district.

Sec. 12-201. Dwelling units in commercial and I zoning districts.¹⁷⁹

A dwelling unit for a watchman, alone or with family, shall be considered an accessory use and shall conform to all applicable regulations for the zoning district in which it is located, except as herein modified:

- 1. A dwelling unit in the commercial district located in a commercial structure shall not occupy the front half of the ground floor or basement.
- 2. A dwelling unit in a commercial or industrial building shall not contain more than one bedroom.
- 3. No detached dwelling unit shall be permitted in the Industrial zoning district.¹⁸⁰
- 4. A dwelling unit that is part of the principal building shall be provided with two exits; one shall be a direct outside exit.
- 5. All buildings shall conform to the building code and applicable fire codes.

Sec. 12-202. Radiation and electrical interference prohibited.¹⁸¹

No activities shall be permitted that emit dangerous radioactivity beyond enclosed areas. There shall be no electrical disturbance (except from domestic household appliances) adversely affecting the operation of ordinary business or household equipment and appliances. Any such omissions are hereby declared a nuisance.

Sec. 12-203. Storage of hazardous materials.¹⁸²

All uses associated with the bulk storage of over 500 gallons of oil, gasoline, liquid fertilizer, chemicals, and similar liquids, except fuel oil stored for residential use on residential property, shall require a Conditional Use Permit in order that the City may have the 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 500 gallons shall secure a Conditional Use Permit within 12 months following enactment of the ordinance from which this article was derived. Suitably sealed diking capable of holding a leakage capacity equal to 115 percent of the tank capacity shall be required around such tanks. Any existing storage tank that,

¹⁷⁷ Code 1982, § 301.716

¹⁷⁸ Code 1982, § 301.717

¹⁷⁹ Code 1982, § 301.718

¹⁸⁰ Ord 1997-21, 12/15/98

¹⁸¹ **Cross reference**--Environment, Ch. 10.; Code 1982, § 301.719

¹⁸² **Cross reference**--Environment, Ch. 10.; Code 1982, § 301.720

in the opinion of the Planning Commission, constitutes a hazard to the public safety, shall discontinue operations within 90 days following notification by the Zoning Administrator.

Sec. 12-204. Explosives.¹⁸³

No activities involving the commercial storage, use or manufacture of materials or products that could decompose by detonation shall be permitted except as are specifically permitted by the Council. Such materials shall include but not be confined to all primary explosives such as lead azide and mercury fulminate, all high explosives and boosters such as TNT, tetryl and nitrates, propellants and components thereof such as nitrocellulose, black powder and nitroglycerine, blasting explosives such as dynamite and nuclear fuel and reactor elements such as uranium 235 and plutonium.

Sec. 12-205. Environmental pollution.¹⁸⁴

- A. All uses, buildings and structures shall conform to the regulations of the state pollution control agency relating to air, water, noise and solid wastes.
- B. No use shall be permitted that will cause or result in the pollution of any tributary of the St. Croix River, any lake, stream, ground water or other body of water in the City.
- C. Chemical insecticides or herbicides shall be stored, handled, utilized and disposed of according to the standards set forth by the state pollution control agency.

Sec. 12-206. Environmental nuisances.¹⁸⁵

No odors, vibration, noise, smoke, air pollution, liquid or solid wastes, heat, glare, dust or other such sensory irritations or health hazards shall be permitted in any zoning district in excess of the minimum standards as set forth in this section. Any violation of such standards is hereby declared a nuisance. The minimum standards shall be as follows:

- A. *Odors.* Any use shall be so operated as to prevent the emission of odorous or solid matter of such quality or quantity as to be reasonably objectionable at any point beyond the lot line of the site on which the use is located, except as regulated by sections 12-139 and 12-140 regulating agricultural operations.
- B. *Vibrations.* The following vibrations are prohibited:
 - 1. Any vibration discernible beyond the property line to the human sense of feeling for three minutes or more duration in any one hour; and
 - 2. Any vibration resulting in any combination of amplitudes and frequencies beyond the safe range of the most current standards of the United States Bureau of Mines on any structure.
- C. *Toxic and noxious matter.* Any use shall be so operated as not to discharge across the boundaries of the lot or through percolation into the atmosphere or the subsoil beyond the boundaries of the lot wherein such use is located toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety, comfort or welfare, or cause injury or damage to property or business.
- D. *Air pollution.* Any use shall be so operated as to control emission of smoke or particulate matter to the degree that it is not detrimental to or shall endanger the public health, safety, comfort or general welfare.
- E. *Animals.* Any building in which domestic farm animals are kept shall be a minimum distance of 100 feet from all lot lines.¹⁸⁶

Notwithstanding anything contained herein to the contrary, the minimum standards of the pollution control agency for noise, air and water pollution and glare, these shall be the minimum standards for the purposes of this section.¹⁸⁷

¹⁸³ **Cross reference(s)**--Environment, Ch. 10.; Code 1982, § 301.721

¹⁸⁴ **Cross reference(s)**--Environment, Ch. 10; Code 1982, § 301.722

¹⁸⁵ **Cross reference(s)**--Environment, Ch. 10.

¹⁸⁶ See Section 12-187(n)(1).

¹⁸⁷ Code 1982, § 301.723

Sec. 12-207. Miscellaneous nuisances.¹⁸⁸

- A. It shall be a nuisance for any person to store or keep any vehicle of a type requiring a license to operate on the public highway, but without a current license attached thereto, whether such vehicle is dismantled or not, outside of an enclosed building in any zoning district.
- B. Creating or maintaining a junkyard or vehicle dismantling yard shall be a nuisance and shall be prohibited.
- C. The following are declared to be nuisances endangering public health:
 - 1. Causing or suffering the effluent from any cesspool, septic tank, drainfield or human sewage disposal system to discharge upon the surface of the ground, or dumping the contents thereof at any place except as authorized by the state pollution control agency.
 - 2. Causing or suffering the pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.
 - 3. Causing or suffering carcasses of animals to not be buried or destroyed or otherwise disposed of within 24 hours after death.
- D. The following are declared to be nuisances affecting the public peace and safety:
 - 1. The placing or throwing on any street, alley, road, highway, sidewalk or other public property of any glass, tacks, nails, bottles or other nuisances that may injure any person or animal or may cause damage to any pneumatic tire when passing over the same.
 - 2. The ownership, possession or control of any unused refrigerator or other container, with doors that fasten automatically when closed, of sufficient size to retain any person and that is exposed and accessible to the public without having the doors, lids, hinges or latches removed or having locks to prevent access by the public.

Sec. 12-208. Noise.¹⁸⁹

- A. *Definitions.* Except as provided in this section, words or phrases used in this section and defined in the rules of the state pollution control agency noise section, Mn Rules, § 7030, shall have the meanings given in those rules.
 - 1. A-weighted means a specific weighting of the sound pressure level for the purpose of determining the human response to sound. The specific weighting characteristics and tolerances are those given in American National Standards Institute S1.4-1983, section 5.1.
 - 2. *Cut-out or bypass* means a mechanism which varies the exhaust system gas flow so as to discharge the exhaust gas and acoustic energy to the atmosphere without passing through the entire length of the system including all exhaust system sound attenuation components.
 - 3. *dB(A)* means a unit of sound level expressed in decibels (dB) and A-weighted.
 - 4. *Exhaust system* means a combination of components which provides an enclosed flow of exhaust gas from engine parts to the atmosphere.
 - 5. *Holiday* means any day fixed by the United States or by state law for suspension of business in whole or in part.
 - 6. *L10* means the sound level, expressed in dB(A) which is exceeded ten percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.
 - 7. *L50* means the sound level, expressed in dB(A) which is exceeded 50 percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.
 - 8. *MPCA* means the state pollution control agency.
 - 9. *Noise* means any sound not occurring in the natural environment, including but not limited to, sounds emanating from airways, roadways, waterways, industrial, commercial, and residential sources.
 - 10. *Noise control officer* means the City Zoning Administrator or other person appointed by the City Council.

¹⁸⁸ Cross reference(s)--Environment, Ch. 10; Code 1982, § 301.724

¹⁸⁹ Cross reference(s)--Environment, Ch. 10.

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11. *Noise pollution* means the presence of any noise or combination of noises in such quantity, at such levels, of such nature and duration, or under such conditions as could potentially be injurious to human health, safety, or welfare; or to animal life; or could interfere unreasonably with the enjoyment of life or property.
12. *Person* means any individual, firm, partnership, corporation, trustee, association, the state and its agencies and subdivision, or any body of persons whether incorporated or not. With respect to acts prohibited or required herein, person shall include employees and licensees.

B. *General noise standard.*

1. *Incorporation by reference.* The MPCA Noise Rule, Mn Rules, §§ 7030.0010 through 7030.0080, and all amendments thereof and supplements thereto are hereby referred to, adopted, incorporated by reference, and made a part of this article. A current copy shall be available for public inspection through the City Clerk's office.
2. *Maximum noise levels by receiving land use districts.* No person shall operate or cause or permit to be operated any source of noise in such a manner as to create a noise level outdoors exceeding the dB limit set in Table 1 for the receiving land use district specified.

Table 1. Sound Levels by Receiving Land Use Districts

	Day (7:00 a.m. - 10:00 p.m.)		Night (10:00 p.m. - 7:00 a.m.)	
	L10	L50	L10	L50
Land Use Districts				
Residential (RR, VHS-R)	65	60	55	50
Commercial (VHS-C)	70	65	70	65
Industrial	80	75	80	75

C. *Exemptions:*

1. The levels prescribed in the section above do not apply to noise originating on public streets and alleys but such noise shall be subject to other ordinances.
2. The levels prescribed above do not apply to farm machinery being operated by a person actively engaged in productive agricultural operations provided the machinery is not stationary.

D. *Noises prohibited.*

1. *Horns, audible signaling devices, etc.* No person shall sound any signaling device on any vehicle except as a warning of danger.¹⁹⁰
2. *Engine exhausts.* No person shall discharge the exhaust or permit the discharge of the exhaust of any steam engine, stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws, regulations, and this article. No exhaust system on any engine shall be modified, altered, or repaired in any manner, including the use of a muffler cut-out or bypass, that shall amplify or otherwise increase noise above that emitted by the device as originally equipped.
3. *Radios, phonographs, paging systems, etc.* No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, paging system, machine or other device for production or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby. Operation of any such set, instrument, phonograph, machine or other device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of violation of this section.
4. *Social gatherings.* No person shall participate in any party or other gathering of people giving rise to noise which disturbs the peace, quiet or repose of the occupants of adjoining or other property. When a

¹⁹⁰ M.S.A. § 169.68

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police officer determines that a gathering is creating such noise disturbance, the officer shall order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall cooperate with police officers and shall make every reasonable effort to see that the disturbance is abated.

5. *Loudspeakers, amplifiers for advertising, etc.* No person shall operate or permit the use or operation of any loudspeaker, sound amplifier, or other device for the production or reproduction of sound on a street or other public place for the purpose of commercial advertising or attracting the attention of the public for any purpose whatsoever.
6. *Schools, churches, etc.* No person shall create any excessive noise on a street, alley or public grounds adjacent to any school, institution of learning, church or other place of worship.

E. *Hourly restriction on certain operations.*

1. *Domestic power equipment.* No person shall operate a garden or lawn tractor, power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, power device for bug eradication, drill, or other similar domestic power maintenance equipment except between the hours of 7:00 a.m. and 10:00 p.m. Snow removal equipment is exempt from this provision.
2. *Refuse hauling.* No person shall collect or remove garbage or refuse in any residential district except between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday.
3. *Construction activities.* No person shall engage in or permit construction activities involving the use of any electric, diesel, or gas-powered machine or other power equipment except between the hours of 7:00 a.m. and 10:00 p.m.

F. *Exception for emergency work.* Noise created exclusively in the performance of emergency work to preserve the public health, safety or welfare, or in the performance of emergency work necessary to restore public service or eliminate a public hazard shall be exempt from the provisions of this article for a period not to exceed 48 hours after the work is commenced. Persons responsible for such work shall inform the noise control officer of the need to initiate such work or, if the work is commenced during non-business hours of the City, at the beginning of business hours of the first business day thereafter. Any person responsible for such emergency work shall take all reasonable actions to minimize the amount of noise and the duration thereof.

G. *Powers and duties of noise control officer.*

1. *Administering officer.* The noise control program established by this chapter shall be administered by the noise control officer.
2. *Testing procedures.* The noise control officer shall adopt guidelines establishing the test procedures and instrumentation used in enforcing the provisions of this section. A copy of such guidelines shall be kept in the office of the City Clerk and shall be available to the public for reference during business hours.
3. *Investigation and inspection.* The noise control officer, with the assistance of other professional agencies or persons as may be necessary, shall conduct all research monitoring and other studies related to sound as are necessary in order to enforce this article and shall make all investigations and inspections in accordance with law as required in applying the provisions of this article.
4. *Noise impact statements.* The noise control officer may require any person applying to the City for a change in zoning classification, permit, license for any structure, operation, process, installation, or alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the officer. Each such statement shall be reviewed to ascertain whether the granting of such change in zoning classification, permit, or license would result in the violation of any provision of this article. Reviews of noise impact statements shall be made by the zoning committee, Planning Commission if appropriate, and recommendations shall be made to the City Council.
5. *Other powers and duties.* The noise control officer shall exercise such other powers and perform such other duties as are reasonable and necessary to enforce the provisions of this section.

H. *Enforcement and penalties.*

1. When the noise control officer, after appropriate testing has been done, determines that a noise exceeds the maximum sound level permitted under Subsection (B) of this section, the noise control officer shall give written notice of the violation to the owner or occupant of the premises where the noise originates,

and order such person to correct or remove each specified violation within such reasonable time as is prescribed in the notice.

2. In all other cases, the noise control officer or the City's law enforcement officer may demand immediate termination of the excessive noise. Failure to adhere to such demand would subject the violator to appropriate criminal enforcement procedure.
3. Section 1-13 shall apply to a violation of this section.¹⁹¹

Sec. 12-209. Visual standards.¹⁹²

- A. It is hereby affirmed as essential public policy that the appearance of this city is a proper matter for public concern and that all open spaces, buildings, signs, plantings, surfaces and structures which may be seen from the public ways and water bodies are subject to the provisions of this article.
- B. The comprehensive plan as adopted clearly states that scenic views, tree cover, slopes and other features of the natural environment are a city concern, therefore, a conditional or Conditional Use Permit for any new use or development may include conditions affecting building setbacks, restrictions on removal of trees and other vegetation, placement and type of driveway access and other conditions on appearance from any public street.

Sec. 12-210. Signs.¹⁹³

- A. *Purpose.* The purpose of this section is to protect and retain the natural scenic beauty of the roadsides throughout the City. By the construction of public roads, the public has created views to which the public retains a right-of-way view, and it is the intent of these standards to prevent the taking of that right.
- B. *Definitions.* As used in this section, the following words and phrases shall have the meaning indicated:¹⁹⁴
 1. *Sign* means a notice that directs attention to a product, place, activity, person, institution, organization or business for public view.
 2. *Sign, advertising,* means a sign that directs attention to a business or profession or to a commodity, service or entertainment.
 3. *Sign, area,* means the entire area within a continuous perimeter enclosing the extreme limits of such sign. However, such perimeter shall not include any structural elements lying outside of such sign and not forming an integral part or border of the sign.
 4. *Sign, banner,* means any sign made of flexible material hung up on a crossbar or between two points of any permanent structure or poles advertising an event such as a grand opening, special sale or similar situation.
 5. *Sign, billboard,* means an outdoor panel for the display of large advertisements in public places, such as alongside highways, roads and streets.
 6. *Sign, business,* means a sign that directs attention to a business or profession or to the commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is attached.
 7. *Sign, display,* means any commodity that is sold or produced by the occupant which is exhibited outside the premises for the purpose of bringing to the attention of others, those items currently for sale within the premises.
 8. *Sign, flashing,* means an illuminated sign which has a light source not constant in intensity or color at all times while such sign is in use.
 9. *Sign, ground,* means a sign which is supported by one or more uprights, poles or braces in or upon the ground.
 10. *Sign, illuminated,* means a sign which is lighted with an artificial light source, that meets government mandated regulations and is appropriate to the application of a building's historic period.
 11. *Sign, motion,* means a sign that has moving parts.

¹⁹¹ Code 1982, § 301.725

¹⁹² Code 1982, § 301.726

¹⁹³ **Cross reference(s)**--Street signs, § 12-1430; signs in heritage preservation areas, § 12-1717; Ord 01-2014, 5/20/2014

¹⁹⁴ Ord 01-2014, 5/20/2014

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12. *Sign, nameplate*, means a sign which states the address of a property, or in the case of a business or industrial property, the name and/or address of the business or industrial occupant.
13. *Sign, off premise directional*, means a sign for public or non-profit organizations, including religious organizations, that is located distant from a building or activity area, and may or may not be located on the same parcel as the building or activity area.
14. *Sign, portable*, means an unlighted sign not affixed to the ground or building and easily carried or moved.
15. *Sign, real estate*, means a sign offering property (land and/or buildings) for sale, lease or rent and located on the property being offered.
16. *Sign, roof*, means a sign erected upon or above a roof or parapet of a building.
17. *Sign, structure*, means the supports, uprights, braces and framework of the sign.
18. *Sign, temporary*, means any sign, except a banner sign, placed in such a manner as not to be solidly affixed to any building, structure or land and advertising an event such as a bazaar, special sale, sporting event, or similar situation.
19. *Sign, wall*, means a sign attached to or erected against the wall of a building with the exposed face of the sign parallel to such wall.
20. *Sign, warning*, means a sign which warns the public of a danger or hazard in the immediate vicinity and is obviously not intended for advertising purposes.

C. *Permit required.*¹⁹⁵

1. Except as otherwise provided in this article, no sign shall be erected, constructed, altered, rebuilt or relocated until a Conditional Use Permit or Sign Permit for the sign has been issued according to the Sign Permit Chart in Section 12-212.
2. No permit will be required under this section for the following signs:
 - a. Real estate sale signs nine square feet or less.
 - b. Political signs.
 - c. Warning signs which do not exceed five square feet in area.
 - d. Public notices defined as notices placed or authorized by the City which are located on private property with permission of the landowner, or on public property or right-of-way.
 - e. Nameplate signs two square feet in area or less.

D. *Exceptions.*¹⁹⁶

1. The regulations contained in this section do not apply to signs attached by adhesive or otherwise attached to or visible through windows and glass portions of doors.
2. On-premise signs for churches or other places of worship shall be permitted by Conditional Use Permit. The total surface area of all on-premise signs for churches or other places of worship shall not exceed 100 square feet. The top of the signs including supporting structure shall not exceed 14 feet above the average grade. The width of the signs shall not exceed 16 feet. The maximum surface area for any sign shall not exceed 0.1 (1/10) square feet per foot of road frontage. Said signs may be illuminated as restricted in Section 12-210 (E) and 12-211.5 (E).

E. *General prohibitions.*¹⁹⁷

1. No sign shall be allowed that prevents ingress or egress from any door, window or fire escape; that tends to accumulate debris as a fire hazard; or that is attached to a standpipe or fire escape or in any other way constitutes a hazard to health, safety, or general welfare of the public.
2. Signs shall not be painted directly on the outside wall of a building except by a Sign Permit. Signs shall not be placed or mounted on a fence, tree, stone or other natural growth nor on any utility pole or structure.
3. Roof signs are prohibited in all zoning districts.
4. Signs on benches, newsstands, car stands, bus stop shelters and similar places shall be prohibited.
5. No sign shall contain any indecent or offensive picture or written matter.
6. Signs flashing shall be prohibited.
7. Neon and fluorescent signs are not allowed except for interior use.

¹⁹⁵ Ord 01-2014, 5/20/2014

¹⁹⁶ Ord 01-2014, 5/20/2014

¹⁹⁷ Ord 01-2014, 5/20/2014

F. *Sign design, construction and maintenance.*¹⁹⁸

1. *Required marking on signs.* Every sign for which a permit is required shall have painted in a conspicuous place thereon in letters not less than one inch in height, the date of erection, the permit number and the voltage of any electrical apparatus used in connection therewith.
2. *Projecting signs.* Signs shall in no case project from a building or structure to any point closer than two feet of a line drawn perpendicularly upward from the curb line. No projecting sign shall be less than nine feet above the sidewalk or the ground level. All projecting signs for which a permit is required shall be constructed entirely of fire resistant material.
3. *Ground signs.*
 - a. No ground sign for which a permit is required shall be erected to a height of more than 12 feet above the ground, unless the face is constructed of sheet metal or other noncombustible facing materials.
 - b. The bottom of the facing of every ground sign shall be a minimum of one foot and a maximum of three feet above the ground, which space may be filled with landscaping, platform or decorative trim of light wood or metal construction.
 - c. The soil used for the dug-in type of anchor or post support shall be carefully placed and thoroughly compacted. The anchors and supports shall penetrate to a depth below ground level of 42 inches.
4. *Multi-faced signs.* Multi-faced signs shall not exceed two times the allowed square footage of single faced signs, except for billboard signs which shall be limited to single facing.
5. *Wall signs.* Wall signs attached to exterior walls of solid masonry or concrete shall be safely and securely attached to the same by means of metal anchors, bolts or expansion screws of not less than three-eighths inch in diameter which shall be embedded at least five inches. No wooden blocks or anchorage with wood used in connection with screws or nails shall be considered proper anchorage, except in the case of wall signs attached to buildings with walls of wood. No wall sign shall be entirely supported by an unbraced parapet wall.
6. *Sign maintenance.*
 - a. The owner of any sign shall be required to have such sign properly painted at least once every two years, if needed, including all parts and supports of the sign, unless such parts or supports are galvanized or otherwise treated to prevent rust or decay.
 - b. The owner or lessee of any sign, or the owner of the land on which the sign is located shall keep the grass, weeds, or other growth cut and the area free from refuse between the sign and the street and also for a distance of six feet all around such sign.
7. *Unsafe or dangerous signs.* Any sign which becomes structurally unsafe, in disrepair, abandoned or endangers the safety of a building or premises shall be taken down and removed or structurally improved by the owner, agent, or person having the beneficial use of the building, structure, or land upon which the sign is located within ten days after written notification from the Zoning Administrator.
8. *Obsolete signs.* Any sign for which no permit has been issued or business has ceased to function shall be taken down and removed by the owner, agent or person having the beneficial use of the building, or land upon which the sign may be found within 30 days after written notice from the Zoning Administrator.¹⁹⁹

Sec. 12-211. Regulations by zoning districts.²⁰⁰

- A. *Required signs.* In all zoning districts one nameplate sign shall be required per building, except accessory structures and residential buildings which shall be required only to display the street address or property number.
- B. *Signs by Conditional Use Permit.* Where a use is permitted in a zoning district by Conditional Use Permit, the sign for that use shall require a Conditional Use Permit unless the sign is otherwise provided for in this article.

¹⁹⁸ Ord 01-2014, 5/20/2014

¹⁹⁹ Code 1982, § 301.727(A); Ord 01-2014, 5/20/2014

²⁰⁰ Ord 01-2014, 5/20/2014

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C. *"A", "AP" and "MS" zoning districts.* No sign shall be permitted in an A, AP or MS zoning district except the following signs if authorized by a permit or as provided in this article:²⁰¹

1. Banner, business, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.
2. No sign shall be so constructed as to have more than two surfaces.
3. One of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate, will be permitted per lot frontage.
4. The size of sign may be no more than a total of 32 square feet, with an eight foot maximum for any dimension except as otherwise provided in Section 12-210 (D)(2).
5. The top of the sign and supporting structure shall not exceed ten feet above grade except as otherwise provided in Section 12-210 (D)(2).
6. Any sign over two square feet shall be setback at least ten feet from any lot line or right-of-way.

D. *"RR" zoning district.*²⁰²

1. Gateway, Nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning signs are allowed.
2. No sign shall be so constructed as to have more than two surfaces.
3. The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary signs where two will be permitted and political signs where one for each candidate will be permitted.
4. The size of signs may be not more than a total of 16 square feet with a four-foot maximum for any dimension except as otherwise provided in this section. The total surface area for all signs shall not exceed 32 square feet per lot except as otherwise provided in Section 12-210 (D)(2).
5. The top of the sign shall not exceed eight feet above grade except as otherwise provided in Section 12-210 (D)(2).
6. The number and size of a gateway sign is exempted from this section of the code and is instead regulated in Section 12-211.5 (F).
7. All signs shall be setback at least ten feet from any lot line or right-of-way.

E. *"VHS-R" and "VHS-C" zoning districts.*²⁰³

1. All applications for a Sign Permit shall be reviewed by the Design Review/Heritage Preservation Commission.
2. The types of signs allowed are: Banner (VHS-C only), business (VHS-C only), illuminated (VHS-C only), nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning.
3. The number of each type of sign allowed per lot frontage, is one real estate sales sign, two temporary signs, one nameplate sign, one political sign for each candidate, and one business sign or one sign for a church or other place of worship.
4. The size of signs permitted is as follows:
 - a. Each real estate sales sign, temporary sign and political sign shall not exceed 16 square feet in area.
 - b. Total area of permanent business signs shall not exceed 16 square feet.
 - c. Total area of nameplate signs shall not exceed 6 square feet.
 - d. In addition to the total sign area of 16 square feet, one eight-inch by ten-inch sign may be posted on the outside of the principal structure.
 - e. The total surface area of all on-premise signs for churches or other places of worship shall not exceed 100 square feet. The top of the signs and supporting structures shall not exceed 14 feet above the average grade. The width of the signs shall not exceed 16 feet. The maximum square feet for any sign shall not exceed 0.1 (1/10) square feet per foot of frontage.
5. The top of the sign shall not exceed 14 feet above the average grade.
6. In no case shall any part of a sign be closer than two feet to a vertical line drawn at the property line.

²⁰¹ Ord 1997-19, 4/20/99; Ord 01-2014, 5/20/2014

²⁰² Ord 09-2006, 9/13/2006; Ord 01-2014, 5/20/2014

²⁰³ Ord 01-2014, 5/20/2014

F. *"I" zoning districts.*²⁰⁴

1. The type of signs allowed are: Advertising, banner, business, illuminated, nameplate, political, portable, real estate sales, religious organization, temporary, wall, and warning.
2. The number of each type of sign allowed per lot frontage is one of each of the permitted type signs, except temporary where two will be permitted and political where one for each candidate will be permitted.
3. No business sign shall exceed 100 square feet in area or face a residential zoning district. No other sign shall exceed 35 square feet in area, except a billboard sign.
4. The top of the sign shall not exceed 20 feet above the average grade.
5. Any sign over ten square feet, with the exception of a billboard sign, shall be set back at least ten feet from any lot line or right-of-way. All signs shall be set back at least 50 feet from any residential or agricultural zoning district.

Sec. 12-211.5 Regulations by sign type.²⁰⁵

A. *Banner signs.*²⁰⁶

1. Banner signs shall conform to the provisions of this article just as permanently affixed signs.
2. Banners shall not exceed 30 square feet.
3. In no event shall banner signs be placed on any lot or parcel of land for a period to exceed 30 days out of any 12-month period.

B. *Billboard signs.*

1. No billboard sign may face a residential district causing it to obscure the residents' view.
2. There shall be no more than one advertisement on the face of the billboard sign. The sign may not be multi-faced.
3. Any billboard sign is limited to one side and the advertising area on that one side is not to exceed 160 square feet.
4. The sign structure, including border, trim and apron, is not to exceed 20 feet overall height. The bottom of the sign is to be no more than eight feet from the ground.
5. The sign area is not to exceed eight feet by 20 feet (160 sq. ft.). The structure, including the border, trim and apron is not to exceed 10 ½ feet by 22 feet (231 sq. ft.).
6. Any off-site billboard sign is to be a minimum of 3,000 feet from any other billboard, business or nameplate sign.
7. The setback shall be 150 feet from any public road right-of-way, 100 feet from any building, a minimum of 500 feet from the intersection of any public road.
8. Billboard signs are permitted only in the Industrial Zoning District.

C. *Construction signs.*

1. Construction signs not exceeding 32 square feet in area shall be allowed in all zoning districts during construction.
2. Such signs shall be removed when the project is substantially completed.

D. *Displays.*²⁰⁷

1. A Sign Permit is required for all displays.
2. Displays shall not contain any light, sign, audio advertising, or other device which would otherwise not be permitted under this article.
3. Permanent displays shall not be permitted.
4. No display will be allowed that prevents ingress or egress from any door, window or fire escape; that tends to accumulate debris as a fire hazard; or that is attached to a standpipe, fire escape or in any other way constitutes a hazard to the health, safety, or general welfare of the public.

²⁰⁴ Ord 01-2014, 5/20/2014

²⁰⁵ Ord 01-2014, 5/20/2014

²⁰⁶ Ord 01-2014, 5/20/2014

²⁰⁷ Code 1982, § 301.727(B); Ord 01-2014, 5/20/2014

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5. Displays cannot reduce the number of required parking spaces established by the current parking ordinance. Displays cannot be located within the public right-of-way of any street or way or other public right-of-way or placed so as to interfere with pedestrian traffic.
 6. Roof displays are not allowed.
 7. Displays cannot be located outside a ten-foot radius from the building or structure. In no case shall displays be closer than ten feet from any property line or right-of-way. All displays must be located on the same parcel on which the business is located.
 8. No display will be permitted which by reason of content, location, shape or overall impression interfere with or serve as a traffic hazard or disturbance to surrounding properties.
 9. The top of the display shall not exceed eight feet above the average grade.
 10. Exceptions may be granted to permit displays for preexisting nonconforming uses if it is determined that no intensification or expansion of the nonconforming use would occur if the permit were granted.
- E. *Electrical signs.*²⁰⁸ No electrically illuminated sign shall be permitted in a residential or agricultural zoning district except as otherwise provided in Section 12-210 (D)(2).
1. Illuminated signs may be permitted, but flashing signs or digitally animated signs, shall be prohibited. Signs giving off intermittent, rotating or direction lights and neon are prohibited.
 2. Illuminated signs shall be diffused or indirect so as not to direct rays of light into adjacent property or onto any public street or way.
 3. No illuminated signs or their support structures shall be located closer than 25 feet to the roadway surface or closer than 10 feet to a street right-of-way line or property line, notwithstanding more restrictive portions of this section, except as otherwise provided in Section 12-211 (E).
- F. *Gateway signs.*²⁰⁹ The City may consider proposals to construct City gateway signage that serve the purpose of welcoming persons to the City and directing them to various business areas. Approval or denial of such proposals shall be at the discretion of the City Council. The following performance standards shall be adhered to and utilized in the City's consideration of such a proposal:
1. The sign is to be constructed on City and/or County owned property and/or right-of-way and may be owned and maintained by the City and/or County.
 2. The sign shall function as a "gateway" feature for the City. The design of the sign must include a visible reference to the City of Afton and exude a feeling of welcome.
 3. The sign shall be a monument sign, which is a type or style of a ground sign that is characterized by a block-type structure, not supported or elevated above ground by poles or braces.
 4. The sign area shall not exceed 100 square feet.
 5. The sign shall not exceed 12 feet in height.
 6. The sign shall be finished in high quality, finish materials.
 7. The signage design shall be reviewed and commented on by the Design Review/Heritage Preservation Commission if the sign is located within the VHS District.
- G. *Nameplate signs.*²¹⁰
1. Nameplate signs shall be surface-mounted on the wall of the building of the property.
 2. Nameplate signs shall be no more than six square feet in area.
- H. *Off-premise directional signs for public and non-profit organizations, including religious organizations.*²¹¹
1. Signs for public and non-profit organizations, including religious organizations are permitted.
 2. Signs advertising commercial businesses are prohibited.
 3. Each sign shall not exceed 20 inches by 30 inches. Signs shall be erected on a single steel post.
 4. The setback required for public and non-profit organizations, including religious organization signs in agricultural, industrial and rural residential districts, is ten feet from property line or right-of-way; in VHS districts, two feet from property line.

²⁰⁸ Ord 01-2014, 5/20/2014

²⁰⁹ Ord 09-2006, 9/13/2006; Ord 01-2014, 5/20/2014

²¹⁰ Ord 01-2014, 5/20/2014

²¹¹ Ord 01-2014, 5/20/2014

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5. The number of signs allowed for public or non-profit organizations, including religious organizations, will be determined through the sign permit process.
6. A Sign Permit is required.

I. *Political signs.*²¹²

1. Political signs are allowed in any zoning district, on private property, with the consent of the owner of the property.
2. Political signs must be removed within seven days following the date of the election or elections to which they apply.

J. *Portable sign.*²¹³ A portable sign shall only give the name and nature of the business and hours of operation.

1. There will be no more than one portable sign per business.
2. Portable signs shall not be larger than 36 inches by 48 inches (12 sq. ft.) of display space on each side with a total height of no more than four feet. The size of a portable sign shall not be included in the total square footage allowed on other permitted signs.
3. A Sign Permit shall be required for all portable signs. In the VHS district, approval by the Design Review/Heritage Preservation Commission is also required for portable signs.
4. All portable signs shall be located on the same parcel on which the business is located. The sign shall not be located in the road right-of-way or placed so as to interfere with pedestrian traffic.
5. Portable signs and mobile signs on wheels shall be in place only during the hours the business is open.
6. Portable signs and mobile signs on wheels must be secured so as to not create a public safety hazard by acts of nature or movement by vandals.
7. Inflatable signs are not permitted.

K. *Private signs.* Private signs, other than public utility warning signs, are prohibited within the public right-of-way of any street or way or other public right-of-way.

L. *Real estate signs.*²¹⁴

1. Real estate sales signs may be placed in any yard providing such signs are not closer than ten feet to any property line.
2. Real estate development project sales signs may be erected for the purpose of selling or promoting a single family residential project of five or more dwelling units provided:
 - a. Such signs shall not exceed 32 square feet in area and shall require a Sign Permit;
 - b. Only one such sign shall be erected on each road frontage with a maximum of two signs per project;
 - c. Such signs shall be removed when the project is 80 percent completed or within six months or when sold or leased, whichever comes first; and
 - d. Such signs shall not be located closer than 100 feet to any existing residence.

M. *Temporary signs.*²¹⁵

1. Signs for non-profit organizations, city sponsored events, fairs, etc. are permitted.
2. Signs advertising businesses are prohibited.
3. The maximum size of temporary signs is 12 square feet of total advertising area.
4. The sign structure is not to exceed five feet.
5. The setback required for temporary signs in agricultural and rural residential districts is ten feet from property line or right-of-way; in VHS districts, two feet from property line.
6. No more than two temporary signs are allowed per parcel.
7. A Temporary Sign Permit is required.
8. In no event, however, shall such sign be placed on any lot or parcel of land for a period to exceed 30 days out of any 12-month period.

²¹² Ord 01-2014, 5/20/2014

²¹³ Ord 01-2014, 5/20/2014

²¹⁴ Ord 01-2014, 5/20/2014

²¹⁵ Ord 01-2014, 5/20/2014

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N. *Traffic signs.*

1. No sign may be erected that, by reason of position, shape, movement, color or any other characteristic, interferes with the proper functioning of a traffic sign or signal or otherwise constitutes a traffic hazard; nor shall signs be permitted which would otherwise interfere with traffic control.
2. No sign will be permitted which by reason of advertising content, location, shape, or overall impression may be expected to be confused with, obscure or interfere with any official traffic sign or device or otherwise serve as a traffic hazard.
3. Private traffic circulation sign and traffic warning signs in alleys, parking lots or in other hazardous situations may be allowed on private property, provided that such signs do not exceed three square feet and are used exclusively for traffic control purposes.

Sec. 12-212. Sign Permit chart.²¹⁶

Zoning District	MS, A or AP	RR	VHS-R	VHS-C	I
Advertising/Billboard sign	N	N	N	N	CUP
Banner sign ²¹⁷	SP	N	N	SP	SP
Business sign	CUP	N	CUP	P	P
Churches and other places of worship--On-premise signs	CUP	CUP	CUP	CUP	N
Displays ²¹⁸	N	N	SP	SP	N
Flashing sign	N	N	N	N	N
Gateway Sign	CC	CC	CC	CC	CC
Illuminated sign	N	N	CUP	CUP	P
Motion sign	N	N	N	N	N
Nameplate sign ²¹⁹	P	P	N	SP	P
Political sign	P	P	P	P	P
Portable sign	SP	SP	SP	SP	SP
Real estate sales sign ²²⁰ (up to nine sq. ft. in area)	P	P	P	P	P
Real estate sales sign ²²¹ (over nine square feet in area)	SP	SP	SP	SP	SP
Real estate development project sales sign ²²²	SP	SP	SP	SP	N
Off-premise directional signs (non-profit & religious)	SP	SP	SP	SP	SP
Roof sign	N	N	N	N	N
Temporary sign	SP	SP	SP	SP	SP
Wall sign	P	P	SP	SP	SP
Warning sign	P	P	P	P	P

KEY: SP = Sign permit (Issued by Zoning Administrator)
 P = Permitted use
 CUP = Conditional use permit (Issued by Zoning Administrator)
 CC = Requires City Council review and approval
 N = Not allowed

²¹⁶ Ord 1997-19, 4/20/99, MS added, Code 1982, § 301.728(C); Ord 97-40, 6/12/01; Ord 01-2014, 5/20/2014

²¹⁷ Ord 01-2014, 5/20/2014

²¹⁸ Ord 01-2014, 5/20/2014

²¹⁹ Ord 01-2014, 5/20/2014

²²⁰ Ord 01-2014, 5/20/2014

²²¹ Ord 01-2014, 5/20/2014

²²² Ord 01-2014, 5/20/2014

Zoning District Abbreviations:²²³

VHS-R	=	Village Historic Site-Residential zoning district
VHS-C	=	Village Historic Site - Commercial zoning district
AP	=	Ag. Preserve, which is an overlay of the Agricultural zoning district
A	=	Agricultural zoning district
MS	=	Marine Services zoning district
RR	=	Rural Residential zoning district
I	=	Industrial zoning district

Sec. 12-213. Manufactured homes.²²⁴

- A. *Compliance.* No person shall park or occupy a manufactured home on the premises of a lot with any occupied dwelling or on any land in the City except as provided for in this section.
- B. *Care facilities.* A manufactured home may be permitted in an A, AP or RR zoning district if the Zoning Administrator finds the following conditions are satisfied:
 1. The manufactured home will be a temporary accessory dwelling unit to be occupied by persons who are:²²⁵
 - a. Infirm to the extent that they require extraordinary care;
 - b. That such care can only be provided, without great economic hardship, by family members residing in the principal dwelling on the premises; and
 - c. The infirmity and the need for care required by Subsections A and B of this Subsection shall be shown by written statement of a physician.
 2. The Administrative Permit is so conditioned that it will expire and terminate at such time as the care facility is no longer the residence of the person suffering from the infirmity who requires such care, or at such time as such care is no longer required.
 3. At the time of termination of the Administrative Permit, the manufactured home care facility shall be removed from the premises within 30 days.
 4. The Administrative Permit is so conditioned so as to be reviewed annually by the Zoning Administrator.
- C. *Temporary farm dwelling.* A manufactured home may be permitted by Administrative Permit in an A or AP zoning district if the Zoning Administrator finds the following conditions are satisfied:
 1. The manufactured home will be a temporary accessory dwelling unit located on a farm of at least 75 acres.²²⁶
 2. The manufactured home will be occupied by persons who are:
 - a. Members of the family of the persons occupying the principal dwelling on the premises; and
 - b. Engaged in the occupation of farming on the premises as partners or other business associates, or employees, of the persons living in the principal dwelling on the premises and who earn 50 percent or more of their annual gross income for federal income tax purposes from such farming on the premises.²²⁷
 3. The Administrative Permit is so conditioned that it will expire and terminate at such time as the persons occupying the manufactured home are no longer engaged in farming on the premises as required by Subsection (2)(b) of this Subsection.
 4. At the time of termination of the Administrative Permit, the manufactured home temporary farm dwelling shall be removed from the premises within 30 days.
 5. The Administrative Permit is conditioned so as to be reviewed annually by the Zoning Administrator.
- D. *Temporary construction office.* A manufactured home may be permitted by an Administrative Permit in any zoning district if the Zoning Administrator finds the following conditions are satisfied:

²²³ Ord 01-2014, 5/20/2014

²²⁴ Code 1982, § 301.728

²²⁵ Ord 05-2013, 3/19/2013

²²⁶ Ord 05-2013, 3/19/2013

²²⁷ Ord 05-2013, 3/19/2013

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1. The manufactured home will be utilized as a field headquarters for directing the on-going construction of a project.
 2. Only one manufactured home shall be permitted on each project.
 3. The manufactured home shall have adequate sanitary facilities or the site shall have temporary sanitary facilities installed.
 4. The manufactured home and parking spaces shall adhere to all setback requirements for the zoning district and shall only utilize the permitted driveway access.
 5. The manufactured home shall not be used as a dwelling unit.
 6. The Administrative Permit is issued only after the building permit has been issued. The manufactured home shall not be placed on the construction site until both a Administrative Permit and a building permit have been issued.
 7. Such permit shall expire 90 days from the date of issuance and may be renewed for one additional 90-day period.
 8. The applicant shall execute a contract with the City agreeing to remove the manufactured home temporary construction office from the City prior to the expiration of the permit, secured by a certified check or cash deposit in an amount set by the Zoning Administrator, and authorizing the City to remove the manufactured home immediately upon expiration of the permit should the applicant fail to do so, and to charge all costs of removal including a reasonable attorney's fee against the security deposit.
- E. *Temporary dwelling unit during construction.* A manufactured home may be permitted by Administrative Permit in any residential or agricultural zoning district if the Zoning Administrator finds the following conditions are satisfied:
1. The manufactured home will be utilized as a temporary accessory dwelling unit by the present or potential occupant of a single-family residence during the construction, reconstruction or alteration of said residency by the present or potential occupant.²²⁸
 2. The manufactured home shall have adequate sanitary facilities as prescribed by the sanitary sewer disposal ordinance, Article IX of this chapter.
 3. The Administrative Permit shall be issued only after the building permit has been obtained for the proposed construction.
 4. The manufactured home and parking spaces shall adhere to all setback requirements for the zoning district and shall utilize the permitted driveway access.
 5. ²²⁹Such permit shall expire 180 days from the date of issuance and may be renewed for one additional 180-day period.
 6. The applicant shall execute a contract with the City agreeing to remove the manufactured home temporary dwelling unit from the City prior to the expiration of the permit, secured by a certified check or cash deposit in an amount set by the Zoning Administrator, and authorizing the City to remove the manufactured home immediately upon expiration of the permit should the applicant fail to do so, and to charge all costs of removal including a reasonable attorney's fee against the security deposit.
- F. *Technical code requirements.* All manufactured homes permitted under this section shall meet or exceed the current manufactured homes building code as defined in M.S.A. § 327.32. The manufactured home shall have a sanitary sewer treatment and disposal system in compliance with the sanitary sewer disposal ordinance, Article IX of this chapter, the state pollution control agency and the health department.
- G. *Location.* When a manufactured home is utilized as allowed by this section, the placement of the manufactured home is subject to the same zoning district dimensional setbacks as a principal structure.
- H. *Additional requirements.* Manufactured homes utilized as accessory dwelling units shall:
1. Use the existing driveway access of the principal dwelling unit.
 2. Be separated by a minimum horizontal distance of 40 feet from any other structure.
 3. Have ground anchors or tie downs as approved by the state manufactured home building code.

²²⁸ Ord 05-2013, 3/19/2013

²²⁹ Ord 06-2006, 6/6/2006

Sec. 12-214. Mining.²³⁰

All mining and related uses of land, including but not limited to the excavation, removal or storage of sand, gravel, rock, clay and other natural deposits, are subject to the adopted standards, codes, ordinances and regulations of the City related to such activities and all regulations in the mining ordinance, article X of this chapter.

²³¹**Sec. 12-215. Land reclamation and land grading.**²³²

- A. Within this article, land reclamation and land grading is the depositing, removing, and/or moving of material so as to alter the topography of a lot.
 - 1. Land reclamation and land grading shall be permitted only by an Administrative Permit in all zoning districts.
 - 2. The depositing, moving and/or removing of more than 50 cubic yards and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or regrading²³³ of an area shall constitute land reclamation and land grading.
 - 3. Land reclamation and land grading in floodplains shall be in accordance with the floodplain ordinance, Article V of this chapter.
 - 4. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disbursed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area.
 - 5. In addition to a finished grading plan, a drainage and erosion control plan may be required, if in the judgment²³⁴ of the Zoning Administrator, significant soil erosion, vegetation destruction or drainage damage may occur during the land alteration process.
 - 6. The finished grading plan and drainage and erosion control plan shall be reviewed by the City Engineer and may be reviewed, as deemed necessary by the Zoning Administrator or the City Council, by the Minnesota Department of Natural Resources, the Washington County Soil and Water Conservation District, and the appropriate Watershed Management Organization and/or district.
 - 7. The Zoning Administrator may require the applicant to post a bond or other financial guarantee to ensure compliance with the permit.
- B. No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the commissioner of the division of waters, soils and minerals of the state department of natural resources. For purposes of these regulations, public waters shall be defined in M.S.A. Ch. 103G, and as follows:
 - 1. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural watercourses, underground water resources and similar features involving directly or indirectly the use of water within the City.
 - 2. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- C. A land reclamation and land grading permit is not required for the following activities:
 - 1. Grading activities associated with a construction project provided a building permit is used and there is a minimal amount of land disturbance; and
 - 2. Subdivisions that have received preliminary plat approval; and
 - 3. Driveways permitted in conjunction with a driveway permit; and
 - 4. Cemetery graves; and

²³⁰ Code 1982, § 301.729, **Cross reference(s)**--Mining, § 12-2301 et seq.

²³¹ Code 1982, § 301.730

²³² Ord 08-2005, 5/17/2005

²³³ Amendment 02-2009, 4/21/2009

²³⁴ Amendment 02-2009, 4/21/2009

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5. Refuse disposal sites controlled by other regulations; and
6. Excavations for wells or tunnels for utilities; and
7. Mining, quarrying, excavating, processing or stockpiling of sand, gravel, rock, aggregate or clay where regulated by the mining ordinance, Article X of this chapter; and
8. Exploratory excavations under the direction of soil engineers or engineering geologists.

D. Grading of Slopes

1. No slopes of 18% or greater shall be disturbed.
 2. Within the Lower St. Croix River Bluffland and Shoreland Management District, no slopes of 12% or greater shall be disturbed (See Sec. 12-702).
 3. Additional grading and filling requirements are applicable if in Shoreland Management District (See Sec. 12-407).
- E. The work for which a land reclamation and land grading permit is used shall commence within 180 days after the date of permit issuance unless an application for an extension of 90 days has been submitted to and approved by the Zoning Administrator.
- F. Permits issued by the Zoning Administrator under the provisions of this section shall expire and be null and void if the work authorized by a permit is abandoned or suspended for a period of 180 days or if work is not commenced or completed within the time limitations of Subsection (E) of this section.

Sec. 12-216. Soil conservation plans.²³⁵

- A. On any development or land reclamation project with more than one acre of soil, drainage patterns or vegetation cover that would be either destroyed or disturbed by the construction process, the Zoning Administrator may require the owner or contractor on such project to request the soil conservation district to prepare a soil conservation plan to protect the soil from erosion or sheet run-off for the duration of the construction project and/or over the long term occupancy of the site.
- B. The Zoning Administrator may require a soil conservation plan on projects that disturb less than one acre of soil, drainage patterns or vegetation cover if, in the judgment of the Zoning Administrator, significant soil erosion, vegetation destruction or drainage damage may occur during the construction process.
- C. A soil conservation plan shall consist of specific written recommendations on how to protect the soil, vegetation and drainage patterns during the construction process. The Zoning Administrator may require construction fencing along the edges of the construction area.
- D. Where construction of a structure is proposed on slopes of 13 percent to 18 percent, the Zoning Administrator shall require the applicant to provide a grading and erosion control plan and to obtain an Administrative Permit.
- E. The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the grading and erosion control plan by a specific date.

Sec. 12-217. Drainage.²³⁶

- A. No land shall be developed or altered and no use shall be permitted that results in surface water run-off causing unreasonable flooding, erosion or deposit of minerals on adjacent properties or water bodies. Such run-off shall be properly channeled into a storm drain, a natural watercourse or drainageway, a ponding area or other facility. To the extent feasible, through ponding or other means, any increase in run-off as a result of the developed portion of a property shall be retained on the property.
- B. The Zoning Administrator, upon inspection of any site that has created drainage problems, or could create drainage problems with proposed new development, may require the owner of such site or the contractor of such development to complete a grading plan and apply for a grading permit.

²³⁵ Code 1982, § 301.731

²³⁶ Code 1982, § 301.732

- C. The owner or contractor of any natural drainage improvement or alteration may be required by the Zoning Administrator to obtain recommendations from the state department of natural resources, the county soil conservation district, the affected watershed district and/or the City Engineer, as well as obtaining a grading permit.
- D. On any slope in excess of 13 percent where, in the opinion of the Zoning Administrator, the natural drainage pattern may be disturbed or altered, the Zoning Administrator may require the applicant to submit both a grading plan and a soil conservation plan prior to applying for a building permit.

Sec. 12-218. Vegetative cutting.²³⁷

- A. For purposes of this article, the following definitions are made:
 - 1. *Clear cutting* means the removal of all live vegetation in excess of six inches in diameter at breast height on any area of 20,000 square feet or more in size.
 - 2. *Selective cutting* means the removal of single scattered live trees or shrubs in excess of six inches in diameter at breast height.
- B. Clear cutting of any site shall require a Conditional Use Permit, except as regulated by Subsection (E) of this section. A reclamation, soil conservation or revegetation plan may be required by the Zoning Administrator as part of the Conditional Use Permit application.
- C. Clear cutting of vegetation shall not be permitted within any required yard of any lot or parcel within any zoning district.
- D. Clear cutting shall not be permitted on slopes greater than 13 percent.
- E. Clear cutting for commercial tree production purposes shall require a Administrative Permit.
- F. Selective tree cutting may occur on any lot provided:
 - 1. The slope does not exceed 30 percent;
 - 2. On slopes greater than 13 percent the Zoning Administrator may require a revegetation plan and a Administrative Permit;
 - 3. Cutting within the St. Croix River District shall be regulated by the Lower St. Croix River Bluffland and Shoreland Management Ordinance, article IV of this chapter.

Sec. 12-219. Swimming pools.²³⁸

- A. A pool is defined as any swimming pool, outdoor hot tub, or other pool of any type with a capacity of over 3,000 gallons or with a depth of over 3½ feet of water.
- B. In all zoning districts where single- and two-family dwelling units are permitted uses, the following standards apply:
 - 1. An Administrative Permit shall be required for any pool.
 - 2. Any swimming pool requiring an Administrative Permit shall also be required to obtain a building permit.
 - 3. An application for an Administrative Permit shall include a site plan showing:
 - a. The type and size of pool;
 - b. Location of pool;
 - c. Location of house, garage, fencing and other improvements on the lot;
 - d. Location of structures on all adjacent lots;
 - e. Location of filter unit, pump and writing indicating the type of such units;
 - f. Location of back-flush and drainage outlets;

²³⁷ Code 1982, § 301.733

²³⁸ Code 1982, § 301.734

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- g. Grading plan, finished elevations and final treatment (decking, landscaping, etc.,) around the pool;
 - h. Location of existing overhead and underground wiring, utility easements, trees and similar features; and location of any water heating unit.
- 4. Pools shall not be located within 20 feet of any septic tank, drainfield or line nor within six feet of any principal structure or frost footing. Pools shall not be located within any required front, side or rear yards.
 - 5. Pools shall not be located beneath overhead utility lines nor over underground utility lines of any type.
 - 6. Pools shall not be located within any private or public utility, walkway, drainage or other easement.
 - 7. The necessary precautions shall be taken during construction to:
 - a. Avoid damage, hazards or inconvenience to adjacent or nearby property; and
 - b. Assure that proper care shall be taken in stockpiling excavated material to avoid erosion, dust or other infringements upon adjacent property.
 - 8. All access for construction shall be over the owner's land and due care shall be taken to avoid damage to public streets and adjacent private or public property.
 - 9. To the extent feasible, back-flush water or water from pool drainage shall be directed onto the owner's property or into approved public drainageways. Water shall not drain onto adjacent or nearby private land.
 - 10. The filter unit, pump, heating unit and any other noise making mechanical equipment shall be located at least 50 feet from any neighboring residential structure and not closer than ten feet to any lot line.
 - 11. Lighting for the pool shall be directed toward the pool and not toward adjacent property.
 - 12. Fencing at least five feet in height shall completely enclose all pools.
 - 13. Required structure or fencing shall be completely installed within three weeks following the installation of the pool and before any water is allowed in the pool. A financial guarantee shall be required to assure erection of the structure or fence.
 - 14. Water in the pool shall be maintained in a suitable manner to avoid health hazards of any type. Such water shall be subject to periodic inspection by the appointed health officer.
 - 15. All wiring, installation of heating units, grading, installation of pipes and all other installations and construction shall be subject to inspection.
 - 16. Any proposed deviation from these standards and requirements shall require a variance in accordance with normal zoning procedures.

Sec. 12-220. Tennis courts.²³⁹

In all zoning districts, the following standards for tennis courts shall apply:

- A. An Administrative Permit shall be required for all private tennis courts on residential lots.
- B. A Conditional Use Permit shall be required for all public, semipublic and commercial tennis courts.
- C. An application for an Administrative Permit or a Conditional Use Permit shall include a site plan drawn to scale showing:
 - 1. The size, shape and pavement and sub-pavement materials;
 - 2. The location of the court;
 - 3. The location of the house, garage, fencing, septic system and other structural improvements on the lot;
 - 4. The location of structures on all adjacent lots;
 - 5. A grading plan showing all revised drainage patterns and finished elevations at the four corners of the court;
 - 6. Landscaping and turf protection around the court;
 - 7. Location of existing and proposed wiring and lighting facilities.
- D. Tennis courts shall not be placed within any required yard.
- E. Tennis courts shall not be located over underground utility lines of any type, nor shall any court be located within any private or public utility, walkway, drainage or other easement.
- F. Solid tennis court practice walls shall not exceed ten feet in height. A building permit shall be required for said walls.

²³⁹ Code 1982, § 301.735

- G. Chain link fencing surrounding the tennis court may extend up to 12 feet in height above the tennis court surface elevation.

Sec. 12-221. Private kennels.²⁴⁰

- A. Private kennels are only permitted after the issuance of a Conditional Use Permit in the agricultural and rural residential zoning districts. Private kennels are prohibited in other zoning districts.
- B. The following standards must be met for private kennels:
1. The kennel shall be operated as a private residential kennel without any boarding of dogs owned by others, no offering of or actual training of dogs owned by others and no regular offering of dogs for sale.
 2. The minimum acreage required for a residential kennel is five acres.
 3. No more than six dogs over six months of age will be permitted on a five-acre parcel. For each additional acre one additional dog over six months of age will be permitted, up to a maximum of ten dogs.
 4. If the land is subdivided, the number of dogs permitted will be reduced if necessary to comply with this article.
 5. The setback from the side and rear lot line shall be a minimum of 100 feet for any part of the kennel operation, except that it shall be a minimum of 200 feet from any existing dwelling on an adjacent parcel.
 6. There shall be a 2,000-foot separation between kennels.
 7. All dogs shall be kenneled within the residence. Outside runs are permitted provided they do not exceed a total area of 5,000 square feet.
 8. No buildings shall be constructed within the runs.
 9. All runs shall be attached to the principal dwelling.
 10. The fencing shall be constructed so that dogs cannot go over, under or through the fence.
 11. The fencing shall be constructed as per the plans accompanying the application which shall be on file in the City hall.
 12. The applicant shall take such measures as are required to limit the noise from the dogs. Complaints of the dogs frequently or habitually howling, yelping, barking or complaints of odor may be grounds for revoking the permit.
 13. Owner shall be present on the premises when more than three dogs are outside.
 14. The permit for private kennel shall be subject to annual review. Adjoining landowners shall be notified at least two weeks before the permit is to be reviewed in order that they may have time to comment on the use. The applicant shall provide a list of adjoining landowners at least 30 days before the required review and pay such fees as are set from time to time by Resolution of the City Council²⁴¹
 15. All waste materials shall be disposed of in accordance with the ordinances of the City and state law and in such a manner as to avoid the creation of a nuisance.
 16. Periodic inspection shall be made by the Zoning Administrator.
 17. Failure to meet the conditions of the Conditional Use Permit shall constitute grounds for revocation of the permit.
 18. All dogs in the kennel shall be licensed by the City.

Sec. 12-222. Bed and breakfast facilities.²⁴²

- A. Bed and breakfast facilities are permitted only after the issuance of a Conditional Use Permit, which shall be subject to annual renewal. Bed and breakfast facilities are prohibited in the industrial zone.
- B. The following standards must be met for bed and breakfast facilities:
1. The owner shall be in residence when the rooms are being rented by paying guests.
 2. The rooms rented out shall be within the residence and not in any accessory building.
 3. No more than two rooms shall be rented, and there shall be no more than four paying guests at one time.

²⁴⁰ Code 1982, § 301.738, **Cross reference(s)**--Kennels, § 6-101 et seq.

²⁴¹ Ord 1997-3, 12-16-97

²⁴² Code 1982, § 301.739, **Cross reference(s)**--Businesses, ch. 8.

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4. Off-street parking shall be provided, with a minimum of one space per guest room and one space for the operator. An additional space shall be provided for any type of trailer or other towed item belonging to a paying guest.
5. The septic system shall be to code and sized for the proposed use, and the property must contain adequate space for an alternate septic system.
6. There shall be no signs other than those allowed for the district.
7. There shall be no exterior indication that the residence is a bed and breakfast facility.
8. No paying guest shall stay in the facility for more than 14 consecutive days.
9. The facility shall not be used for commercial receptions, parties, etc., for the serving to paying guests of meals other than breakfast or the serving of meals to nonresident guests for compensation. There shall be no cooking in guestrooms.
10. Smoke alarms shall be installed. Certification that the facility has passed inspection by the fire district shall be submitted to the City before the permit is issued.
11. The building official shall inspect and approve the facility, and certification that the facility has passed inspection by the building official shall be submitted to the City before the permit is issued.
12. A license is required by the county public health department and a copy of the license issued by the public health department shall be submitted to the City within ten days of its receipt by the operator of the bed and breakfast facility.
13. Bed and breakfast facilities shall meet the current side and rear setback requirements for the zone in which they are located.
14. Operators of bed and breakfast facilities are required to give clients directions for reaching the residence.
15. Failure to meet the conditions of the Conditional Use Permit shall constitute grounds for withdrawal of the permit.
16. If ownership is transferred, an amended SUP must be applied for by the new owner within 60 days of the change in ownership.
17. The Conditional Use Permit will terminate if the amended permit is not requested within 60 days or if there is no request for annual renewal.

Sec. 12-223. Hotels.²⁴³

- A. A hotel as defined in Section 12-55 shall be permitted in the VHS-C zoning district only, upon the issuance of a Conditional Use Permit.
- B. One off-street parking space as defined in Section 12-196 shall be required for each guest room in a hotel and one space for each employee shall be provided. These parking spaces are in addition to off-street parking spaces required for any associated use such as a restaurant, bar, and related facilities.
- C. Minimum lot size, lot width, setbacks (except where the structure involved exists as nonconforming and no increase in the violation of the setback occurs) and maximum site coverage shall be regulated as per Section 12-132, and the number of hotel rooms in the structure shall be limited to two double occupancy hotel rooms per old village lot contained within the contiguous property upon which the structure is located, or within the contiguous property in an adjacent block situated entirely within the VHS-C zoning district. If lots in an adjacent block are used for density purposes for hotel rooms, they shall not be used for any principal purpose, but may be used only for septic area or parking spaces required for the hotel and associated uses such as a restaurant or bar.
- D. Sanitary facilities must comply with all state, county, and city codes and the sanitary facilities of the hotel shall be exclusively for the use of hotel room guests.
- E. Signage for a hotel shall be regulated as per Section 12-210.
- F. Hotel shall not be of more than two stories in height unless approved by the City Council upon recommendation of the fire marshal.
- G. The fire safety, sprinkler and alarm systems shall be in compliance with the state, county and local codes, and shall be adequate in the view of the fire marshal and the City Engineer for the health and safety of the occupants of the hotel and the adjoining landowners.

²⁴³ Code 1982, § 301.737, **Cross reference(s)**--Businesses, ch. 8.

- H. All other codes, including the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq. and floodplain ordinances, Section 12-901 et seq. must be complied with.

Sec. 12-224. Marinas.²⁴⁴

- A. A marina may be permitted in the VHS district only, upon the issuance of a Conditional Use Permit.
- B. One and one-half parking spaces (as defined in Section 12-196) per slip, plus one space per employee, shall be provided. Additional parking for trailers may be required as determined necessary by the City.
- C. Minimum lot size, lot widths, and maximum site coverage shall be regulated as per this article and the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq.
- D. Sanitary facilities must comply with all state, county and city codes.
- E. All structures and other facilities associated with the marina must meet applicable setbacks from the river as outlined in the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq.
- F. Design and operation of facilities must be consistent with applicable provisions of the state fire code, various licenses, permits, or design standards of the state pollution control agency, state department of natural resources, and state department of public health.
- G. Docks must be at least as long as watercraft moored and must be at least three feet wide if provided on both sides of watercraft or at least five feet wide if provided on only one side. Replacement of docks at existing marinas may be replaced at the same width and length as they existed at time of replacement.
- H. Covered slips may be allowed if they are earth tone in color.
- I. All other codes, including the Lower St. Croix River Bluffland and Shoreland Management ordinance, Section 12-576 et seq. and floodplain ordinances, Section 12-901 et seq. must be complied with.

Sec. 12-225. Coin-operated machines.²⁴⁵

Coin-operated, automatic machines dispensing food, soft drinks, and other food and materials shall not be permitted outside of a building, except as approved by Conditional Use Permit.

Sec. 12-226. Studio, art or crafts.²⁴⁶

Sec. 12-227. Garage sales.²⁴⁷

- A. No person or organization shall hold more than four garage sale occasions in the course of any calendar year.
- B. All garage sales held within the City limits shall abide by the following provisions:
1. No garage sales shall last for more than three consecutive days.
 2. Garage sales shall not commence earlier than 8:00 a.m. and shall not conduct business beyond 8:00 p.m.
 3. Signs advertising garage sales must comply with the existing city ordinances at the time of the sale and must be retrieved by 6:00 p.m. on the day following the last day of the sale.
- C. Any person or organization violating the provisions of this section is guilty of a misdemeanor.

²⁴⁴ Code 1982, § 301.740, **Cross reference(s)**--Businesses, Ch. 8.

²⁴⁵ Code 1982, § 301.711, **Cross reference(s)**--Businesses, Ch. 8.

²⁴⁶ Repealed in Ordinance 2005-1, 2/15/05 (Refer to Sec. 12-1324)

²⁴⁷ Res 1997-5, 2-11-97; Res 1997-16, § 8, 6-17-97

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Sec. 12-228. Home occupations.²⁴⁸

Requirements for home occupations are as follows:

- A. There shall be no outward indication that the residence is anything other than a single-family residential dwelling unit.
- B. Each permitted home occupation must be conducted within the principal dwelling unit and shall not be conducted in an accessory building.
- C. No exterior storage of equipment or materials used in a home occupation shall be permitted.
- D. Uses which are otherwise permitted by Conditional Use Permit or Administrative Permit shall not be considered home occupations but shall be subject to the requirements of Section 12-134.
- E. No home occupation shall be permitted that creates the need for more than three parking spaces at any given time in addition to the parking spaces required by the occupants.
- F. There shall be no signage visible from outside the dwelling other than those otherwise permitted in the zoning district in which the dwelling is located.
- G. The home occupation shall not produce light, glare, noise, fumes, smoke, dust, heat, odors or vibration detectable to the normal senses off the property, or traffic. Pollutants and toxic wastes of any nature are not allowed.
- H. No equipment shall be permitted to be used in the home occupation, which may create electromagnetic interference to surrounding property.
- I. There shall be no retail sales of goods allowed as part of any home occupation.
- J. Any interior or exterior alterations resulting from home occupations shall be prohibited, except those customarily found in a single-family dwelling.

Sec. 12-229. Wind Energy Systems.²⁴⁹

- A. *Purpose.* The purpose of this Section is to regulate the installation and operation of a Wind Energy Conversion System (WECS) within the City of Afton not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (MS 116C.S1-116C).
- B. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where expressly defined in another section, article or the context clearly indicates a different meaning.

A-weighted –means a specific weighting of the sound pressure level for the purpose of determining the human response to sound.

dB(A)-means a unit of sound level expressed in decibels (dB) and A-weighted.

L10 –means the sound level, expressed in dB(A) which is exceeded ten percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.

L50 –means the sound level, expressed in dB(A) which is exceeded 50 percent of the time for a one-hour period, as measured by test procedures approved by the director of the MPCA.

Nacelle - compartment containing the electrical generator.

²⁴⁸ Res. No. 1997-16, § 8, 6-17-97

²⁴⁹ Ord 05-2010, § 12-229, 6/15/2010; Ord 10-2010, § 12-229, 11/16/2010

Rotor diameter - The diameter of the circle described by the moving rotor blades.

Total height of WECS - The total height shall be measured from the surrounding grade at the base of the tower before construction to the highest component of each WECS.

Tower for WECS - The vertical structure that supports the electrical generator or rotor blades.

WECS - Wind Energy Conversion System: An electrical generating facility comprised of one wind turbine and accessory facilities, including but not limited to: power lines, transformers and substations that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site and/or distributed into the electrical grid.

Wind Turbine - A wind turbine is any electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy.

C. GENERAL REQUIREMENTS

1. *Safety Design Standards*

- a. Engineering Certification - For each WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
- b. Clearance - Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

2. *Standards*

- a. A WECS of no more than 40 kW in total name plate generating capacity shall be permitted in Afton.
- b. Number per Lot - No more than one (1) WECS per lot shall be permitted.
- c. Tower configuration – Each WECS shall be installed with monopole or lattice tower type; no guyed towers shall be permitted.
- d. Height – Total height shall not exceed 135 feet from grade existing at the base of the tower prior to construction or grading.
- e. Property Line Setback – The setback from all property lines and other structures shall be 1 ½ times the tower height plus the minimum accessory structure setback as defined in Section 132.
- f. Color and Finish - All wind turbines and towers that are part of a WECS shall be white, grey or another non-obtrusive color. Finishes shall be matte or non-reflective.
- g. Lighting - No tower requiring a light shall be allowed. Lighting of or on the tower shall be prohibited.
- h. Signage - No signage shall be permitted on each WECS with the exception that the manufacturer's or owner's company name and/or logo may be placed upon the nacelle.
- i. Waste Disposal- Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- j. Discontinuation and Decommissioning - A WECS shall be considered a discontinued use after 180 days without energy production, unless a plan is developed and submitted to the Afton City Administrator outlining the steps and schedule for returning the WECS to service. Each WECS and any accessory facilities shall be removed to four feet below ground level within 90 days of the decommissioning of use. The site shall be restored to its pre-existing condition.
- k. Orderly Development - Upon issuance of a conditional use permit, each WECS applicant shall notify the appropriate Minnesota agency of the project location and details.

4. *Performance Standards*

- a. Noise – The following standards which shall include ambient noise shall be measured and applied at all property lines.

Table 1

Day 7:00 a.m. – 10:00 p.m.	Night 10:00 p.m. – 7:00 a.m.
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L10	L50	L10	L50
65 dB	60 dB	55 dB	50 dB

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed WECS for the following:

- (1) Existing or ambient noise.
- (2) Existing plus proposed WECS: maximum estimate of noise from the proposed WECS plus the existing noise environment.

No WECS shall be operated in such a manner as to create a noise level exceeding the decibel limit set in Table 1 at any location outside the parcel on which the WECS is located.

- b. Electrical codes and standards - Each WECS and any accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
- c. Federal Aviation Administration- Each WECS shall comply with FAA standards and permits.
- d. Minnesota State Building Code - Each WECS shall comply with the International Building Code as adopted by the State of Minnesota.
- e. Interference - The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to the City for permits. No WECS shall be constructed so as to interfere with City, County or Minnesota Department of Transportation microwave transmissions.

D. REQUIRED PERMITS

No person, firm or corporation shall erect, construct in place, re-erect, replace or make structural repairs to any tower without making application for and receiving an approved conditional use or administrative permit and building permit, when applicable. In all cases, review by the City of Afton Zoning Administrator and Building Official are required to ensure that necessary Administrative Permits and Conditional Use Permits are applied for and reviewed under the procedures established in this Ordinance.

E. SUBMITTAL REQUIREMENTS

1. The names of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid, if applicable.
5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
6. Engineer's Minnesota State certification and project design specifications.
7. Documentation of land ownership or legal control of the property.

F. DISTRICT REGULATIONS

WECS will not be allowed in the VHS District. WECS will be administratively permitted in all other zoning districts.

Sec. 12-230. Solar Energy Systems.²⁵⁰

- A. *Scope.* This article applies to all solar energy installations in the City of Afton.
- B. *Purpose.* Consistent with the City Comprehensive Plan, the intent of this Section is to allow reasonable capture and use, by households, businesses, and property owners, of their solar energy resource, and

²⁵⁰ Ord 03-2015, 8/18/2015

encourage the development of renewable energy businesses, consistent with community development standards. The City of Afton has adopted this ordinance for the following purposes:

1. Comprehensive Plan Goals. To meet the goals of the Comprehensive Plan and preserve the health, safety and welfare of the City's citizens by promoting the safe, effective and efficient use of active solar energy systems installed to reduce the on-site consumption of fossil fuels or utility-supplied electric energy. The following solar energy standards specifically implement the following goals:
 - a. *Goal* – Encourage the use of local renewable energy resources, including appropriate applications for wind, solar, and biomass energy.
 - b. *Goal* – Promote sustainable building design and management practices in residential, commercial, and industrial buildings to serve the needs of current and future generations.
2. Green House Gas Reduction (GHG). Solar energy is an abundant, renewable, and nonpolluting energy resource and its conversion to electricity or heat will reduce our dependence on nonrenewable energy resources and decrease the Green House Gas (GHG) emissions and other air and water pollution that results from the use of conventional energy sources.
3. Local Resource. Solar energy is an under-used local energy resource. Encouraging the use of solar energy will diversify the community's energy supply portfolio and [limit](#) exposure to fiscal risks associated with fossil fuels.
4. Improve Competitive Markets. Solar energy systems offer additional energy choice to consumers and will improve competition in the electricity and natural gas supply market.

- C. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where expressly defined in another section, article or the context clearly indicates a different meaning.

Building-integrated Solar Energy Systems - An active solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

Community Solar - A solar-electric (photovoltaic) array that provides retail electric power (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system, consistent with Minn. Statutes 216B.1641 or successor statute. A community solar system may be either an accessory or a principal use.

Grid-intertie Solar Energy System - A photovoltaic solar energy system that is connected to an electric circuit served by an electric utility company.

Off-grid Solar Energy System - A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility company.

Passive Solar Energy System - A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Photovoltaic System - A solar energy system that converts solar energy directly into electricity.

Renewable Energy Easement, Solar Energy Easement - An easement that limits the height or location, or both, of permissible development on burdened land on which the easement is placed in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the land on which the easement is placed, as defined in MN Statute 500.30 Subd. 3 or most recent version.

Renewable Energy System - A solar energy or wind energy system. Renewable energy systems do not include passive systems that serve a dual function, such as a greenhouse or window.

Roof Pitch - The final exterior slope of a building roof calculated by the rise over the run, typically but not exclusively expressed in twelfths such as 3/12, 9/12, 12/12.

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Solar Access - Unobstructed ~~access~~ use of the solar resource (see definition below) on a lot or building, including access across adjacent parcel air rights, for the purpose of capturing direct sunlight to operate a solar energy system.

Solar Collector - A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Collector Surface - Any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. Collector surface does not include frames, supports and mounting hardware.

Solar Daylighting - A device specifically designed to capture and redirect the visible portion of the solar spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

Solar Energy - Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy Device - A system or series of mechanisms designed primarily to provide heating, cooling, electrical power, mechanical power, solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive solar energy systems are designed as a solar energy device, such as a trombe wall, and not merely a part of a normal structure such as a window.

Solar Energy System - A device or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of sunlight for space heating or cooling, generation of electricity, water heating, or providing daylight for interior lighting.

Solar Farm - A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A solar farm is the principal land use for the parcel on which it is located.

Solar Heat Exchanger - A component of a solar energy device that is used to transfer heat from one substance to another, either liquid or gas.

Solar Hot Air System - An active solar energy system that includes a solar collector to provide direct supplemental space heating by heating and re-circulating conditioned building air. The most efficient performance typically uses a vertically mounted collector on a south-facing wall.

Solar Hot Water System (also referred to as Solar Thermal) - A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including residential domestic hot water and hot water for commercial processes.

Solar Mounting Devices - Racking, frames, or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

Solar Resource - A view of the sun from a specific point on a lot or building that is not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year.

Solar Storage Unit - A component of a solar energy device that is used to store solar generated electricity or heat for later use.

- D. *General requirements.* All solar energy systems shall comply with all applicable local, state and federal regulatory codes including all electrical, building and plumbing code requirements.

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1. *Permitted accessory use.* Active solar energy systems shall be allowed as accessory to the primary land use in all zoning districts in which structures of any sort are allowed and are designed to supply energy for the primary use.
 2. *Solar Access.* The City encourages solar access to be protected in all new subdivisions and allows for existing solar to be protected consistent with Minnesota Statutes.
 - a. No structure shall be erected that will block solar access for existing principal structures or infringe on the solar access of the buildable area of a vacant lot or parcel.
 - b. Right to Solar Access. No homeowners' agreement, covenant, common interest community, or other contract between multiple property owners shall forbid installation of solar energy systems or create design standards that effectively preclude solar energy installations.
 - c. Easements Allowed. The City has elected to allow solar easements to be filed, consistent with Minnesota Stat. Chapter 500 Section 30. Any building owner can purchase an easement across neighboring properties to protect access to sunlight. The easement is purchased from or granted by owners of neighboring properties and can apply to buildings, trees, or other structures that would diminish solar access.
 - d. Subdivision Solar Easements. The City may require new subdivisions to identify and create solar easements when solar energy systems are implemented as a condition of a PUD, subdivision, conditional use, or other permit, as specified in Section 8 of this ordinance.
 3. *Safety Conditions.* All applicable health and safety standards shall be met.
 4. *Required Permits.* Building Permits, Electrical Permits and/or Plumbing Permits are required to construct and install solar energy systems in the City of Afton, whether residential or commercial and whether ground-, pole-, building-, or roof-mounted. Electrical Permits are obtained through the State of Minnesota. Building and Plumbing Permit applications are obtained through the City and shall include:
 - a. "To-scale" horizontal and vertical (elevation) drawings of the solar energy system, including:
 - i. For a Pitched Roof Mounted System - the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.
 - ii. For a Flat Roof Mounted System - the distance to the roof edge or parapets on the building, identifying the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof and/or parapet.
 - b. Site drawing showing the type and locations of the systems and their placement on the property, including required setbacks and property lines.
 5. *Interconnection agreement.* All electric solar energy systems that are connected to the electric distribution or transmission system through the existing service of the primary use on the site shall obtain an interconnection agreement with the electric utility in whose service territory the system is located. Solar energy systems connected directly to the distribution or transmission system must obtain an interconnection agreement with the interconnecting electric utility. Off-grid systems are exempt from this requirement.
- E. *Standards.* All solar energy systems are subject to the accessory use standards for the district in which it is located, including, but not limited to, setback, height, and coverage limits.
1. *Aesthetic.* Solar energy systems are subject to the following aesthetic standards:
 - a. Installation on Residential structures must be designed to blend into the architecture of the building.
 - b. Installation on Commercial structures shall be placed on the roof to limit visibility from the public right-of-way or to blend into the roof design, provided that minimizing visibility still allows the property owner to reasonably capture solar energy.
 - c. The color of the solar collector is not required to be consistent with other roofing materials.
 - d. Active solar energy systems that do not meet the aesthetic standards will require a Conditional Use Permit.
 2. *Size.* For residential applications, under no circumstances shall a solar array exceed 40 kW.

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3. *Height.*
 - a. Building- or Roof-mounted systems. Shall not exceed the maximum height allowed in any zoning district.
 - i. Shall be no higher than twenty-four (24) inches above the roof.
 - ii. For purposes of height measurement, solar systems other than building-integrated systems shall be considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices for the zoning district in which the system is being installed, except that solar energy systems shall not be required to be screened.
 - b. Ground- or Pole-mounted systems. Shall not exceed 20 feet in height when oriented at maximum tilt.
 4. *Set-backs.* Active solar energy systems must meet the accessory structure setback for the zoning district and primary land use associated with the lot on which the system is located.
 - a. Building- or Roof-mounted systems. In addition to the building setback, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built, unless the collector and mounting system has been explicitly engineered to safely extend beyond the edge, and setback standards are not violated. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.
 - b. Ground- or Pole-mounted systems. Must be set back from the property line the same distance as required for other accessory structures and may not extend into the side- or rear-yard setback when oriented at minimum design tilt.
 5. *Impervious Coverage.* The surface area of pole- or ground-mount systems must comply with the City's overall impervious coverage requirements.
 - a. Impervious coverage will be calculated based on the footprint of the system at minimum tilt.
 - b. Building- or Roof-mounted systems. Shall allow for adequate roof access to the south-facing or flat roof upon which the panels are mounted.
 - c. Ground- or Pole-mounted system. The collector surface of any foundation, compacted soil, or other component of the solar installation is considered impervious surface.
 - d. Vegetated ground under the collector surface shall be used to mitigate stormwater runoff.
 6. *Glare.* All solar energy systems shall minimize glare so as not to affect adjacent or nearby properties.
 - a. Measures to minimize glare include selective placement of the system, screening on the north and/or sides of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
 7. *Historic Buildings.* Solar energy systems on buildings within designated historic districts or on locally designated historic buildings (exclusive of State or Federal historic designation) will require an administrative permit and a design review by the Heritage Preservation Commission (HPC).
- F. *Zoning District and Lot Size requirements.*
1. *VHS districts:*
 - a. For Ground-Mounted systems, the maximum solar panel square footage allowed is 150 square feet or 1% of the total square footage of the lot, whichever is less.
 - b. Roof-Mounted systems solar panel square footage is not restricted, however, it may be limited by the size of the roof or the roof structure.
 - c. Must meet City of Afton historical preservation standards.
 - d. Requires an administrative permit and design review by the Heritage Preservation Commission (HPC).
 2. *Rural Residential (RR) and Agriculture (Ag) districts:*
 - a. *On lots up to 10 acres:*
 - i. If not fully screened:
 - (1) A maximum height of 15 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback.

- ii. If fully screened:
 - (1) A maximum height of 20 feet and a total panel square footage of 1,000 square feet, subject to being fully screened from public roads and neighboring properties, and subject to statutory and/or public utility power generation restrictions.
 - b. *On lots 10 to 20 acres:*
 - i. If not fully screened:
 - (1) A maximum height of 15 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback.
 - (2) A maximum height of 15 feet and a total panel square footage of 500 square feet if setback 200 feet from all property lines, subject to statutory and/or public utility power generation restrictions.
 - ii. If fully screened:
 - (1) A maximum height of 20 feet and a total panel square footage of 1,000 square feet, subject to statutory and/or public utility power generation restrictions, at the required setback.
 - c. *On lots 20 acres or greater:*
 - i. If not fully screened:
 - (1) A maximum height of 20 feet at maximum vertical tilt and a total panel square footage of 300 square feet, at the required setback.
 - (2) A maximum height of 20 feet and a total panel square footage of 500 square feet if setback 200 feet from all property lines, subject to statutory and/or public utility power generation restrictions.
 - (3) A maximum height of 20 feet and a total panel square footage 750 square feet if setback 250 feet from all property lines, subject to statutory and/or public utility power generation restrictions.
 - ii. If fully screened:
 - (1) A maximum height of 20 feet and a total panel square footage of 2,000 square feet if fully screened, subject to statutory and/or public utility power generation restrictions, at the required setback.
3. *Industrial districts:*
- a. Rooftop community systems are permitted only in the Industrial districts.
 - b. Ground-mount community solar energy systems are allowed only in the Industrial districts and are allowed as conditional uses.
 - c. Solar farms are only allowed in the Industrial districts.

G. *Standards for specific solar uses.*

- 1. *Community solar energy systems.* Roof or ground-mount solar energy systems, may be either accessory or primary use, designed to supply energy for off-site uses on the distribution grid, consistent with Minn. Statutes 216B.1641 or successor statute.
 - a. Rooftop community systems are permitted only in the Industrial districts.
 - b. Ground-mount community solar energy systems are allowed only in the Industrial districts and are allowed as conditional uses.
 - c. An interconnection agreement must be completed with the electric utility in whose service territory the system is located.
 - d. All structures must comply with setback, height, and coverage limitations for the district in which the system is located.
 - e. Ground-mount systems must comply with all required standards for structures in the district in which the system is located.
- 2. *Solar farms.*
 - a. Solar farms are only allowed in the Industrial districts.
 - a. Solar farms require a Conditional Use Permit.
 - b. Solar farms are subject to the City's stormwater management and erosion and sediment control provisions and National Pollutant Discharge Elimination System (NPDES) permit requirements.
 - c. Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

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- d. Power and communication lines. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the City in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or distance makes undergrounding infeasible, at the discretion of the Zoning Administrator.
- e. Site Plan Required. A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the City. The site plan should also show all zoning districts, and overlay districts.
- f. Aviation Protection. For solar farms located within 500 feet of an airport or within the A or B safety zones of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
- g. Agricultural Protection. Solar farms must comply with site assessment or soil identification standards that are intended to protect agricultural soils.
- h. Proper Maintenance. All solar installations shall be maintained according to industry standards and shall be in working order for the duration of its useful life.

H. *Discontinuation and Decommissioning.*

1. A decommissioning plan shall be required to ensure that facilities are properly removed if they are known to be dysfunctional or are discontinued after their useful life.
2. Decommissioning of solar panels must occur in the event they are not in use for six (6) consecutive months.
3. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site.
4. Disposal of structures and/or foundations shall meet the provisions of the City's Solid Waste Ordinance.
5. The City may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

Sec. 12-231. Farmers Market. ²⁵¹

A. *Performance Standards.*

1. A farmers market requires a special event permit.
2. In the VHS-R, a farmers market can be held only in a public park.
3. A farmers market shall be operated by a local non-profit organization, and shall not be operated by a commercial entity.
4. The sale of food products is subject to obtaining any required permits or licenses from the Public Health Department.
5. Parking and display areas associated with the farmers market shall not distract or interfere with existing business operations, traffic circulation patterns or parking.
6. The site shall be kept in a neat and orderly manner and display of items shall be as compact as possible so as to not interfere with existing business, parking or driveway operations.
7. Sales merchandise trailers, temporary stands, etc., shall be located on an asphalt or concrete surface unless approved in a city park through a special event permit.
8. A farmers market with a valid special event permit may have one temporary sign not to exceed 24 square feet in area and not more than six feet in height.
9. The operator shall have the written permission of the current property owner to locate on a specific site.
10. A daily clean-up program shall be presented as part of the permit application.
11. Signage and lighting plans shall be approved by the zoning administrator prior to any sales.
12. Dates, times and location of the sales shall be approved as part of the special event permit.

²⁵¹ Ord01-2015; 05/19/2015

Secs. 12-232--12-275. Reserved.

ARTICLE III. SHORELAND MANAGEMENT

DIVISION 1. GENERALLY

Sec. 12-276. Statutory authorization.²⁵²

This article is adopted pursuant to the authorization and policies contained in M.S.A. ch. 105, Mn Rules, §§ 6120.2500--6120.3900, and the planning and zoning enabling legislation in M.S.A. ch. 462.

Sec. 12-277. Policy.²⁵³

The uncontrolled use of 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 values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City.

Sec. 12-278. Jurisdiction.²⁵⁴

The provisions of this article shall apply to the shorelands of the public water bodies as classified in Section 12-361. Pursuant to Mn Rules, §§ 6120.2500--6120.3900, no lake, pond, or flowage less than ten acres in size in municipalities or 25 acres in size in unincorporated areas 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 Council, be exempt from this article.

Sec. 12-279. Compliance.²⁵⁵

The use of any shoreland of 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.

Sec. 12-280. Enforcement.²⁵⁶

The Zoning Administrator is responsible for the administration and enforcement of this article. Any violation of the provisions of this article 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) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this article can occur regardless of whether or not a permit is required for a regulated activity pursuant to Section 12-326.

Sec. 12-281. Interpretation.²⁵⁷

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the Council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

²⁵² Code 1982, § 303.1.1

²⁵³ Code 1982, § 303.1.2

²⁵⁴ Code 1982, § 303.2.1

²⁵⁵ Code 1982, § 303.2.2

²⁵⁶ Code 1982, § 303.2.3

²⁵⁷ Code 1982, § 303.2.4

LAND USE

Sec. 12-282. Abrogation and greater restrictions.²⁵⁸

It is not intended by this article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. Where the conditions imposed by any provision of this article are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are most restrictive or which impose higher standards or requirements shall prevail.

Sec. 12-283. Definitions.²⁵⁹

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:

Bluff means a topographic feature such as a hill, cliff, or embankment having the following characteristics:

- A. Is a slope of 18 percent or greater as measured over horizontal distances of 50 feet or more.
- B. The slope drains toward the water body.
- C. Part or all of the feature is located in the shoreland area.

Bluff impact zone means a bluff and land located within 40 feet from the top of a bluff.

Bluffline means a line along the top of a slope connecting the points at which the slope, proceeding away from the water, becomes less than 18 percent and it only includes slopes greater than 18 percent visible from the waterbody. The location of the bluffline for any particular property shall be certified by the Zoning Administrator who may require certification by a registered land surveyor. All setbacks required shall be applicable to each bluffline.

Boathouse means a structure designed and used solely for the storage of boats or boating equipment.

Building line means a line parallel to a lot line or the ordinary high water level at the required setback beyond which a structure may not extend.

Commissioner means the commissioner of the department of natural resources.

Conditional use means a land use or development as defined by this article which may be allowed as provided by this article.

Deck means a horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than three feet aboveground.

Duplex means a dwelling structure on a lot having two units, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living and sanitation facilities, and meeting the density requirements.

Dwelling site means a designated location for residential use by one or more persons using temporary or moveable shelter, including camping and recreational vehicle sites.

Dwelling unit means any structure or portion of a structure, or other shelter designed as short or long-term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, bed and breakfast and resort rooms and cabins.

Earthen tone shall mean shades of brown or green which blend with the surrounding vegetation so as to be visually inconspicuous from the water during summer months.

²⁵⁸ Code 1982, § 303.2.6

²⁵⁹ Code 1982, § 303.2.7; Res. No. 1997-16, § 17, 6-17-97, **Cross reference(s)**--Definitions generally, § 1-2.

AFTON CODE

Extractive use means the use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat not regulated under M.S.A. §§ 93.44 to 93.51.

Forest land conversion means the clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.

Forest management means the primary use of the land is for commercial timber production.

Guest cottage is not permitted in any zoning district.

Hardship means the same as that term is defined in M.S.A. ch. 462.

Industrial uses 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.

Lot means a parcel of land designated by plat, metes and bounds, registered land survey, auditors plat, or other accepted means and separated from other parcels or portions by such description for the purpose of sale, lease or separation.

Lot coverage means that portion of a lot covered by any structures, driveway, parking facility or any impervious surface.

Lot width means 300 feet of frontage on an improved public road and at the ordinary high water mark.

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.

Ordinary high water level means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Planned unit development is not permitted in any zoning district.

Protected water means any water as defined in M.S.A. § 645.44, subd. 8a, and M.S.A. § 1036.005, subd. 18.

Public water means any waters as defined in M.S.A. § 645.44, subd. 8a, M.S.A. § 1036.005, subd. 18.

Scenic easement, also referred to as a natural protection easement, means an easement dedicated by a developer restricting the use of lands with steep slopes, floodprone areas as well as other fragile areas. The purpose of the scenic easement is to protect environmentally sensitive lands.

- A. Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service. Such easements shall be required as a condition of subdivision approval, and shall prohibit the following activities:
 1. Dumping.
 2. Burning.
 3. Grading.
 4. Grazing of domesticated farm animals.
 5. Vegetative cutting.
 6. Motorized vehicles.
 7. Construction of any structure, including driveways.

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- B. Such scenic easements shall be recorded against the affected lots in the subdivision.
- C. The City shall have the right to reasonable access to easement areas to verify compliance with the restrictions, and to cross adjacent lands in common ownership with the easement area to obtain such access.
- D. A scenic easement prohibits the owner from engaging in harmful activities in the area subject to the easement, but does not grant the general public any right of access to the land.

Semipublic use means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

Sensitive resource management means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

Setback means the minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.

Sewage treatment system means a septic tank and soil absorption system as described in Section 12-413.

Sewer system means pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

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 the following distances from public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands 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 commissioner.

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 M.S.A. § 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

Special protection district means properly managed development in areas generally unsuitable for development or uses due to flooding, erosion, limiting soil conditions, steep slopes or other major physical constraints. It also means management and preservation of areas with special historical, natural or biological characteristics.

Conditional Use Permit means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance, article II of this chapter, exist, the use or development conforms to the comprehensive and use plan of the community, and the use is compatible with the existing neighborhood.

Structure means any building or appurtenance, including decks, swimming pools, tennis courts, or anything constructed or erected the use of which requires location on the ground or attached to something having location on the ground.

Subdivision means land that is divided for the purpose of sale, rent or lease.

Variance means the same as that term is defined or described in M.S.A. ch. 462.

AFTON CODE

Wetlands means those lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland has one or more of the following attributes:

- A. At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in "National List of Plant Species that Occur in Wetlands: North Central (Region 3)," Fish and Wildlife Service, May, 1988, or later revisions.
- B. The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in "Hydric Soils of the United States," Soil Conservation Service, October, 1985, or later revisions.
- C. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands in this city are identified in the "Afton Water Resources Inventory," Washington County Soil and Water Conservation District, January 1983, or later revisions.

Secs. 12-284--12-325. Reserved.

DIVISION 2. ADMINISTRATION²⁶⁰

Sec. 12-326. Permits required.²⁶¹

- A. A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Section 12-407. Application for a permit shall be made to the Zoning Administrator on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided.
- B. A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by Section 12-413, shall be reconstructed or replaced in accordance with the provisions of this article.

Sec. 12-327. Certificate of zoning compliance.²⁶²

The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Section 12-326. This certificate will specify that the use of land conforms to the requirements of this article. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this article and shall be punishable as provided in Section 12-280.

Sec. 12-328. Variances.²⁶³

- A. Variances may only be granted in accordance with M.S.A. ch. 462. A variance may not circumvent the general purposes and intent of this article. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the Board of Adjustment must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

²⁶⁰ **Cross references**—Administration, ch.2.

²⁶¹ Code 1982, § 303.3.12

²⁶² Code 1982, § 303.3.2

²⁶³ Code 1982, § 303.3.33

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- B. The Planning Commission shall hear requests for variances in accordance with the rules that it has adopted for the conduct of business and shall make recommendations to the City Council which acts as the Board of Adjustment. 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 required in Section 12-329 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.
- C. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system in compliance with the City's sewage ordinance, Article IX of this chapter.

Sec. 12-329. Notifications to the department of natural resources.²⁶⁴

- A. Copies of all notices of any public hearings to consider variances, amendments, or special 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. A copy of approved amendments and subdivision/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.

Secs. 12-330--12-360. Reserved.

DIVISION 3. CLASSIFICATION SYSTEMS

Sec. 12-361. Basis of classification.²⁶⁵

The public waters of the City have been classified below consistent with the criteria found in Mn Rules, § 6120.3300, and the Protected Waters Inventory Map for Washington County, Minnesota.

- A. *Shoreland areas.* The shoreland area for the waterbodies listed in Subsections (B) and (C) of this section shall be defined in Section 12-283 and as shown on the official zoning map.
- B. *Lakes.*
 - 1. *Natural Environment Lakes* *Protected Waters Inventory I.D.#*

Lake Edith	4P
Fahlstrom Pond	5W
Belwin Lake	7W
Metcalf Lake	464W
- C. *Rivers and streams.*
 - 1. *Tributary streams*²⁶⁶

Valley Branch	Sections 9, 10, 14, 15
Trout Brook	Sections 30, 31, 32, 33, 34
Unnamed to St. Croix River	Sections 28, 21, 22, 23
 - 2. *Trout streams*

South Fork of the Valley Branch	Sections 14, 15, 16, 17, 18
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²⁶⁴ Code 1982, § 303.3.42

²⁶⁵ Code 1982, § 303.4.13

²⁶⁶ All protected watercourses in the city shown on the Protected Waters Inventory Map for Washington County, a copy of which is hereby adopted by reference, not given a classification in Subsections a and b of this Subsection shall be considered "tributary."

3. All other rivers and streams in the City having a total drainage area of greater than two square miles are assigned a tributary streams classification.

Sec. 12-362. Criteria for designation.²⁶⁷

The land use districts in Section 12-363, and the delineation of a land use district's boundaries on the official zoning map, must be consistent with the goals, policies, and objectives of the comprehensive land use plan and the following criteria, considerations, and objectives:

- A. General considerations and criteria for all land uses:
 1. Preservation of natural areas;
 2. Present ownership and development of shoreland areas;
 3. Shoreland soil types and their engineering capabilities;
 4. Topographic characteristics;
 5. Vegetative cover;
 6. In-water physical characteristics, values, and constraints;
 7. Recreational use of the surface water;
 8. Road accessibility;
 9. Socioeconomic development needs and plans as they involve water and related land resources;
 10. The necessity to preserve and restore certain areas having significant historical or ecological value.
- B. General considerations and criteria for all water uses:
 1. Preservation of wildlife habitat;
 2. Preservation of aquatic habitat;
 3. Prevention of shoreline erosion;
 4. Prevention of the degradation of water quality;
 5. Protection of the environment of outdoor educational facilities.
- C. In order to achieve the above-listed objectives and in consideration of the limited size of the water bodies:
 1. No motorized vehicles or craft shall be permitted with the exception of electric motors.
 2. No motorized vehicles or craft used for recreational purposes shall be permitted within 50 feet of the high water mark of any lake or stream.
 3. No aquatic chemicals shall be used without notice to riparian lot owners and the City.
 4. No structure shall remain on the water during winter months for longer than 12 hours.
 5. No lawn chemicals, fertilizers or pesticides shall be applied within 200 feet of the high water mark of any protected water,, pursuant to Chapter 25, Article 1, Section 25-1 to 25-7.

Sec. 12-363. Land use district descriptions.²⁶⁸

The land use districts provided below, and the allowable land uses therein for the given classifications of water bodies, shall be properly delineated on the official zoning map for the shorelands of this community. These land use districts are in conformance with the criteria specified in MN Rules, § 6120.3200, subd. 3:

P	=	Permitted use
C	=	Conditional Use Permit
A	=	Administrative Permit
N	=	Not permitted

A. *Land use districts for lakes:*

1. Special protection district uses:	<i>Natural Environment Lakes</i>
a. Forest management	N
b. Sensitive resource management	P
c. Agricultural: Cropland and pasture	P
d. Agricultural feedlots	N
e. Parks and historic sites	C
f. Extractive use	N
g. Single residential	P

²⁶⁷ Code 1982, § 303.4.2

²⁶⁸ Code 1982, § 303.4.2, Ord. 97-43, 11/13/01

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- | | | |
|---|---|--|
| h. Mining of metallic minerals and peat | N | |
| i. PUD | N | |
| j. Semipublic | C | |
| k. Industrial use | N | |
| l. Duplex | C | |
- B. *Land use districts for rivers and streams:*
- | | <i>Tributary</i> | <i>Trout Stream</i> |
|---------------------------------------|------------------|---------------------|
| 1. Special protection district uses: | | |
| a. Forest management | N | N |
| b. Sensitive resource management | P | P |
| c. Agricultural: Cropland and pasture | P | P |
| d. Agricultural feedlots | N | N |
| e. Parks and historic sites | C | C |
| f. Extractive use | N | N |
| g. Single residential | A | A |
| h. Mining of metallic and peat | N | N |
| i. Semipublic | C | C |
| j. Duplex | C | C |
| k. Industrial use | N | N |
| l. PUD | N | N |
2. One-half the distance from the water's edge of any trout stream to the closest point of any dwelling but not less than 20 feet nor more than 50 feet either side of the centerline, vegetative cutting of grass and shrubs shall not be permitted in order to maintain important shade and cover as well as to minimize sedimentation of the trout creek. Parcels currently nonconforming will be subject to Section 12-57(A), (B) and (G).
3. Any discharge from development affecting the creek shall not exceed the discharge rate prior to development, nor shall it increase the sedimentation in the creek.

Sec. 12-364. Use, upgrading of inconsistent land use districts.²⁶⁹

When an interpretation question arises about whether a specific land use fits within a given "use" category, the interpretation shall be made by the City Council after a public hearing and a recommendation by the Planning Commission. When a question arises as to whether a land use district's boundaries are properly delineated on the official zoning map, this interpretation shall be made by the City Council after a public hearing and a recommendation by the Planning Commission.

Secs. 12-365--12-400. Reserved.

DIVISION 4. ZONING AND WATER SUPPLY SANITARY REQUIREMENTS²⁷⁰

Sec. 12-401. Lot area and width standards.²⁷¹

The lot area and lot width standards for single and duplex residential lots created after the date of enactment of this article for the lake and river/stream classifications are the following:

A. Unsewered lakes.

1. *Natural environment lakes:*

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width

²⁶⁹ Code 1982, § 303.4.23

²⁷⁰ **Cross references**—Zoning, § 12-51 et seq.; sewage, § 12-1901 et seq.

²⁷¹ Code 1982, § 303.5.13

AFTON CODE

Single	5 acres	300 feet	5 acres	300 feet
Duplex (CUP)	10 acres	400 feet	100 acres	400 feet

B. River/stream lot width standards:

1. <i>Tributary</i>		<i>Acres</i>	<i>Feet</i>
a. Single		5	300
b. Duplex	CUP	10	400
2. <i>Trout stream</i>			
a. Single		5	300
b. Duplex	CUP	10	400

C. Additional special provisions:

1. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building setback line.
2. Subdivisions of duplexes, (permitted only by Conditional Use Permit) on natural environment lakes and tributary and trout streams must also meet the following standards:
 - a. Each building must be set back at least 200 feet from the ordinary high water level;
 - b. Each building must have common sewage treatment and water systems in one location and serve both dwelling units in the building;
 - c. Watercraft docking facilities for each lot must be centralized in one location and serve both dwelling units in the building; and
 - d. No more than 25 percent of a lake's shoreline in the proposed development can be in duplex developments.
3. Lots intended as controlled accesses to public waters shall not be permitted.

Sec. 12-402. Placement of structures on lots.²⁷²

When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. On an undeveloped bluffland or shoreland lot which has two adjacent lots, with principal dwelling structures on both such adjacent lots within 200 feet of the common lot line, any new structure shall be setback from the ordinary high water mark the average setback of such adjacent structures plus 40 feet or the minimum standard setback, whichever is less.

A. Structure and on-site sewage system setbacks (in feet) from ordinary high water level*.

Setbacks		
Classes of Public Waters	Structures Unsewered (feet)	Sewage Treatment System (feet)
<i>Lakes:</i>		
Natural Environment	200	150
<i>Recreational Rivers:</i>		
Tributary	200	150
Trout Streams	200	150

B. The following additional structure setbacks apply, regardless of the classification of the water body:

<i>Setback from:</i>	<i>Setback (in feet)</i>
1. Top of bluff	40
2. Unplatted cemetery	150

²⁷² Code 1982, § 303.5.21

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3. All other setbacks shall meet the zoning ordinance, article II of this chapter.
- C. Development on a lot, any portion of which is within 75 feet of the ordinary high water mark of any unclassified body of water, shall be subject to a building and septic system setback of 75 feet from such ordinary high water mark. All other lot requirements shall be subject to the regulations of the zoning ordinance, article II of this chapter, for the basic zoning district in which the lot is located.
- D. Maximum site coverage by any structure and parking area is ten percent or one-half acre, whichever is greater.
- E. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

Sec. 12-403. Design criteria for structures.²⁷³

- A. *High water elevations.* Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or floodproofed must be determined as follows:
 1. For lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;
 2. For rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with Mn Rules, §§ 6120.5000 to 6120.6200 governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities.
- B. *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 the following design requirements:
 1. Stairways and lifts must not exceed four feet in width on residential lots;
 2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area;
 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, and must be approved by the soil and water conservation district;
 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 and be of an earthen tone;
 6. Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of Subsections (1) to (5) of this subsection are complied with in addition to the requirements of M.S.A. ch. 1340.
 7. Stairways, lifts and landings are not permitted on scenic easements.
- C. *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 removed and documented in a public repository.
- D. *Steep slopes.* The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures,

²⁷³ Code 1982, § 303.5.22

vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

Sec. 12-404. Height of structures.²⁷⁴

All structures in special protection district must not exceed 35 feet in height.

Sec. 12-405. Shoreland alterations.²⁷⁵

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.

Sec. 12-406. Vegetation alterations.²⁷⁶

- A. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of driveways are exempt from the vegetation alteration standards that follow.
- B. Removal or alteration of vegetation, except for agricultural uses as regulated in Section 12-477 is subject to the following standards:
 - 1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed in order that structures, vehicles and other facilities are screened as viewed from the water assuming summer leaf-on conditions.
 - 2. Along rivers and streams, existing shading of water surface shall be preserved.
 - 3. In shore and bluff impact zones and on steep slopes, 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 placements of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, provided that:
 - a. The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer leaf-on conditions, is not substantially reduced;
 - b. The cutting, including topping, involves trees less than six inches in diameter at breast height;
 - c. The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained;
 - d. Along rivers, existing shading of water surfaces is preserved;
 - e. The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards; and
 - f. A permit is obtained from the Zoning Administrator.

Sec. 12-407. Topographic alterations; grading and filling²⁷⁷.

- A. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- B. Public roads and parking areas are regulated by Section 12-408.
- C. Notwithstanding Subsections (A) and (B) of this section, a grading and filling permit will be required in order to meet the following:
 - 1. Within this article, land reclamation is the reclaiming of land by depositing or moving material so as to alter the grade. Land reclamation shall be permitted only by Conditional Use Permit in all zoning districts. However, no Conditional Use Permit for land reclamation shall be permitted on slopes of 18

²⁷⁴ Code 1982, § 303.5.23, Ord. 97-43, 11/13/01

²⁷⁵ Code 1982, § 303.5.3

²⁷⁶ Code 1982, § 303.5.31

²⁷⁷ Code 1982, § 303.5.32, **Cross reference(s)**--Mining, § 12-2301 et seq.

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- percent or greater nor in any wetland. Depositing a total of more than 50 cubic yards of material per acre, either by hauling in or regrading the area shall constitute land reclamation. Land reclamation in floodplains shall be in accordance with the floodplain ordinance, article V of this chapter. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disbursed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area. All plans must be approved by the soil and water conservation service.
2. No person, county, municipality or other political subdivision shall appropriate or use any public water, surface or underground, without first obtaining a use of public waters permit and written permission of the commissioner of the division of waters, soils and minerals of the state department of natural resources and all other state, county, local permits.
 3. For purposes of these regulations, public waters shall be defined in M.S.A. § 645.44, subd. 8a, M.S.A. § 1036.005, subd. 18.
 4. Public waters shall include all lakes, ponds, swamps, streams, drainageways, floodplains, floodways, natural water courses, underground water resources and similar features involving directly or indirectly the use of water within the City.
 5. No public water area shall be filled, partially filled, dredged, altered by grading, mining or otherwise utilized or disturbed in any manner without first securing a public waters use permit from the state department of natural resources and the U.S. Army Corps of Engineers, and a grading permit from the City. Such grading permits shall be reviewed and approved by the department of natural resources, the City Engineer, the watershed district, the Planning Commission and the City Council.
- 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. No grading or filling of any wetland is permitted;
 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. Fill or excavated material shall not be placed on steep slopes;
 8. Fill or excavated material shall not be placed in bluff impact zones;
 9. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under M.S.A. § 1036.245.
 10. Alterations of topography shall only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties, and do not cause the potential for erosion;
 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.
 12. Scenic easements on slopes greater than 18 percent shall be required as per the City subdivision ordinance, article VI of this chapter.
- E. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to public waters.

Sec. 12-408. Placement and design of roads, driveways, and parking areas.²⁷⁸

²⁷⁸ Code 1982, § 303.5.4, **Cross reference(s)**--Streets and sidewalks, ch. 20.

- A. All driveways, parking areas and public roads must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, and plans must be approved by the soil and water conservation district.
- B. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones. No parking facilities other than residential parking shall be permitted.

Sec. 12-409. Stormwater management.²⁷⁹

The following general and specific standards shall apply:

A. General standards:

- 1. Existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
- 2. 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.
- 3. 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 must be used.

B. Specific standards:

- 1. Impervious surface coverage of lots must not exceed ten percent of the lot area or one-half acre, whichever is greater.
- 2. 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 field office technical guide of the local soil and water conservation districts and all plans must be approved by that agency.
- 3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

Sec. 12-410. Agricultural use standards.²⁸⁰

General cultivation farming, grazing, nurseries, horticulture, truck farming, and wild crop harvesting are permitted provided they do not occur on slopes greater than 12 percent and do not intrude on the bluff impact zones and provided the shore and impact zones are maintained in a permanent vegetative condition. 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.

Sec. 12-411. Special uses.²⁸¹

Special uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of special uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

- A. *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:
 - 1. The prevention of soil erosion or other possible pollution of public waters as well as the runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction;
 - 2. The visibility of structures and other facilities as viewed from public waters is limited;

²⁷⁹ Code 1982, § 303.5.5

²⁸⁰ Code 1982, § 303.5.6

²⁸¹ Code 1982, § 303.5.7

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3. The site is adequate for water supply and onsite sewage treatment; and
4. 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 watercrafts.

B. *Conditions attached to Conditional Use Permits.* The Planning Commission, upon consideration of the criteria listed above and the purposes of this article, shall recommend to the City Council 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:

1. Increased setbacks from the ordinary high water level;
2. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
3. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

Sec. 12-412. Water supply.²⁸²

Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the state department of health and the state pollution control agency.

Sec. 12-413. Sewage treatment.²⁸³

A. *Sewage treatment.* Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

1. Publicly-owned sewer systems must be used where available.
2. All private sewage treatment systems must meet or exceed the state pollution control agency's standards for individual sewage treatment systems contained in the document titled, Individual Sewage Treatment Systems Standards, Chapter 7080, a copy of which is hereby adopted by reference and declared to be a part of this article and must meet the City septic system requirements.
3. On-site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Section 12-402.
4. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in Subsections (1)--(4) of this section. It shall be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations. The evaluation criteria are:
 - a. Depth to the highest known or calculated ground water table or bedrock;
 - b. Soil conditions, properties, and permeability;
 - c. Slope; including the ability of the septic system to meet the required setbacks;
 - d. The existence of lowlands, local surface depressions, and rock outcrops.
5. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Section 12-479.

B. *Nonconforming sewage treatment systems.* These systems must meet the following requirements:

1. A sewage treatment system not meeting the requirements of this section must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property or when the property is transferred. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level. The City sanitarian is required to submit a report to the Zoning Administrator.
2. The City shall identify nonconforming or illegal sewage treatment systems located on properties identified in Section 12-361(B) and (C) and shall require repair, replacement or reconstruction when appropriate. The City shall require that nonconforming systems be pumped at a minimum of once every two years and a well water test be made to determine the level of nitrates and coliforms present. The pumping shall be done by a licensed pumper who shall certify as to the observed conditions of the system

²⁸² Code 1982, § 303.5.8

²⁸³ Code 1982, §§ 303.5.82, 303.6.3

and the results placed on file at city hall. The well testing results shall be verified by a laboratory approved by the Zoning Administrator or by the county public health department.

Secs. 12-414--12-475. Reserved.

DIVISION 5. NONCONFORMITIES

Sec. 12-476. Non-conforming uses.²⁸⁴

All legally established non-conformities as of the date of adoption of the ordinance from which this article was derived may continue, but they will be managed according to applicable state statutes and other regulations of this community for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the standards in this division will also apply in shoreland areas.

Sec. 12-477. Construction on nonconforming lots of record.²⁸⁵

- A. Lots of record in the office of the county recorder on August 19, 1975, that do not meet the requirements of Section 12-401 may be allowed as building sites provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, sewage treatment and setback requirements of this article are met and the lot meets the requirements of the zoning ordinance, article II of this chapter, regarding nonconformity.
- B. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for such lot. In evaluating the variance, the Board of Adjustment shall consider, along with all criteria listed in Section 12-328, sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- C. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Section 12-401 the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of Section 12-401 and the zoning ordinance, article II of this chapter.

Sec. 12-478. Additions/expansions to nonconforming structures.²⁸⁶

- A. All structures in existence prior to the adoption of the ordinance from which this article was derived which do not meet the structure setbacks and other dimensional standards of this article shall be considered substandard structures.
- B. Any extension, enlargement, or alteration of an existing substandard structure or sanitary facility shall meet the setback standards of this article.
- C. Exceptions to the setback standards for substandard structures may include the following:
 - 1. An extension, enlargement, or alteration of an existing substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the shoreline or ordinary high water level.
 - 2. An improvement to an existing structure or facility may be allowed to extend laterally (parallel to the shoreline or ordinary high water level) when the improvement is within 60% of the required setback and in compliance with all of the dimensional standards and side yard setbacks of the zoning ordinance, article II of this chapter.
 - 3. Exterior decks attached to the structure which do not extend any roof or foundation, may be permitted to extend laterally (parallel to the shoreline or ordinary high water level) at the same setback as the

²⁸⁴ Code 1982, § 303.6.0

²⁸⁵ Code 1982, § 303.6.1

²⁸⁶ Ord 97-43, 11/13/01

substandard structure.

- D. If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of this article.

Secs. 12-479--12-500. Reserved.

DIVISION 6. SUBDIVISION REQUIREMENTS²⁸⁷

Sec. 12-501. Land suitability.²⁸⁸

Each lot created through subdivision, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

Sec. 12-502. Consistency with other controls.²⁸⁹

- A. Subdivisions must conform to all official controls of the City. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly-owned sewer and water systems, a subdivision will not be approved unless domestic water supply is available and a sewage treatment system consistent with sections 12-402 and 12-413 and an approved septic system can be provided for every lot.
- B. Each lot shall meet the minimum lot size and dimensional requirements of Section 12-401, including at least a minimum contiguous lawn area, that is free of limiting factors as identified in the City ordinance sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks shall not be approved.

Sec. 12-503. Information requirements.²⁹⁰

Sufficient information must be submitted by the applicant for the community to make a determination of land suitability as well as complying with the subdivision ordinance, article VI of this chapter. The information shall include at least the following:

- A. Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
- B. The surface water features required in M.S.A. § 505.02, subd. 1, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
- C. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
- D. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion and runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction activities;

²⁸⁷ **Cross reference**—Subdivisions, § 12-1251 et seq.

²⁸⁸ Code 1982, § 303.7.11

²⁸⁹ Code 1982, § 303.7.12

²⁹⁰ Code 1982, § 303.7.13

- E. Location of 100-year floodplain areas and floodway districts from existing adopted maps or data;
- F. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream;
- G. All slopes of 18 percent or greater shall be identified; and
- H. All slopes of 12 percent to 18 percent shall be identified.

Sec. 12-504. Dedications.²⁹¹

When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

Sec. 12-505. Platting.²⁹²

All subdivisions as a plat in accordance with M.S.A. ch. 505 and this article: No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision.

Sec. 12-506. Controlled access or recreational lots.²⁹³

Lots intended as controlled accesses to public waters or for recreational use areas for use by nonriparian lots within a subdivision shall not be permitted.

Secs. 12-507--12-575. Reserved.

ARTICLE IV. LOWER ST. CROIX RIVER BLUFFLAND AND SHORELAND MANAGEMENT²⁹⁴

DIVISION 1. GENERALLY

Sec. 12-576. Short title.

This article shall be known, cited and referred to as the Lower St. Croix River Bluffland and Shoreland Management Ordinance; except as referred to herein, where it shall be known as, "This article."

Sec. 12-577. Intent and purpose.²⁹⁵

This article is adopted for the purpose of:

- A. Designating suitable land use districts along the bluffland and shoreland of the Lower St. Croix River.
- B. Regulating the area of a lot, and the length of bluffland and water frontage suitable for building sites.
- C. Regulating the setback of structures and sanitary waste treatment facilities from blufflines to protect the existing and/or natural scenic values, vegetation, soils, water, and bedrock from disruption by manmade structures or facilities.
- D. Regulating the setback of structures and sanitary waste treatment facilities from shorelines to protect the natural scenic value, floodplain, and water quality.
- E. Regulating alterations of the natural vegetation and topography.

²⁹¹ Code 1982, § 303.7.14

²⁹² Code 1982, § 303.7.15

²⁹³ Code 1982, § 303.7.16

²⁹⁴ **Cross reference**—Subdivision requirements for the Lower St. Croix River shoreland, § 12-1496 et seq.

²⁹⁵ Res 1997-16, § 18, 6-17-97

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- F. Conserving and protecting the natural scenic values and resources of the river valley and maintaining a high standard of environmental quality to comply with state department of natural resources standards and criteria for the Lower St. Croix National Scenic Riverway²⁹⁶

Sec. 12-578. Existing codes.²⁹⁷

- A. The provisions of this article are in addition to and not in replacement of the provisions of the zoning ordinance, article II of this chapter. Any provisions of the zoning ordinance, article II of this chapter, relating to the Lower St. Croix Riverway shall remain in full force and effect except as they may be contrary to the provisions of this article.
- B. In the village historic site (VHS) district of this article designated in Section 12-636, existing zoning districts in effect and uses permitted on May 1, 1974, by article II of this chapter may again be permitted by the City Council by Conditional Use Permit, subject to the provisions of Mn Rules, § 6105.0510, subp. 2 and approval in writing by the commissioner of natural resources, if they meet the following standards:
1. The proposed use is consistent with and complementary to the existing, adjacent, urban land uses and municipal plans.
 2. The dimensional requirements of Section 12-637.
 3. The sideyard setbacks and frontage requirements of the zoning ordinance, article II of this chapter.
 4. A parking layout and site plan which provides on-site, off-street parking spaces for all employees of the project, an exclusive area for loading docks where required by local ordinance, and off-street customer parking spaces as required by local ordinance.
 5. An on-site grading and surface water run-off plan for the site which minimizes soil erosion and degradation of surface water quality.
 6. In sewerred areas, public sewer will service the proposed project.
 7. A landscaping plan for the site is illustrated which minimizes the visual impact of the proposed project as viewed from the river and which visually screens all parking areas from the river. The applicant shall provide the City with a performance bond for the cost of all landscaping to insure compliance with the landscaping plan.
 8. A public hearing as per Section 12-831 and forwarding of the final action of the local community to the commissioner of natural resources within ten days of the final action.
 9. The project meets all other existing local zoning and subdivision requirements.
 10. The project requires no alteration or fill of shoreline, bluffland, or floodway, except for temporary docking and launching of watercraft.
 11. No lighted or flashing signs shall face riverward.
 12. Detailed plans and specifications as presented at the public hearing are sufficient to obtain all local access, building, zoning, and sewer permits.
- C. In the village historic site (VHS) district, the following are considered Conditionally Permitted Uses:
1. Seasonal business
 2. Cemeteries
 3. Churches
 4. Information centers
 5. Medical uses
 6. Day and school nurseries
 7. Offices
 8. Off-street loading
 9. Parks
 10. Photo studios
 11. Recreation areas--Public and semi-public
 12. Retail shopping
 13. Historic or scenic structures

²⁹⁶ MN Rules, §§ 6105.0351--6105.0550

²⁹⁷ Ord 1997-19, 4/20/99

14. Taverns or bars
15. Utility substations
16. Commercial waterfront uses
17. Marinas
18. Hotels²⁹⁸
19. Cafes and restaurants
20. Supper clubs
21. Theaters
22. Nursery and garden supplies (exterior or enclosed sales)²⁹⁹

D. The following are permitted in the Marine Services District as:

1. Conditionally Permitted Uses – Boat, boat trailer and marine storage and repair, enclosed or screened; single-family residential; and utility substation; and
2. Accessory Uses – Boat, boat trailer and marine sales; off-street loading; and storage, enclosed or screened.

Sec. 12-579. Definitions.³⁰⁰

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:

Appurtenance means a structure subordinate to and serving the principal structure on the same lot and customarily incidental thereto such as garages, decks, essential services, signs, docks, and stairways and lifts, except that appurtenance does not include private water supply and sewage and waste disposal systems below the ground.

Bluffline means a line along the top of a slope connecting the points at which the slope, proceeding away from the river or adjoining watershed channel, becomes less than 12 percent and it only includes slopes greater than 12 percent visible from the river or any watercourse tributary to the river. The location of the bluffline for any particular property shall be certified by a registered land surveyor or the Zoning Administrator. More than one bluffline may be encountered proceeding away from the river or adjoining watershed channel. All setbacks required herein shall be applicable to each bluffline.

Harbor means a portion of a body of water along or landward of the natural shoreline deep enough for recreational watercraft navigation, and so situated with respect to shoreline features as to provide protection from winds, waves, ice, and currents. Natural harbors consist of bays and estuaries, while artificial harbors are constructed by dredging.

Marina and marine services means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as fueling, sewage pumpout, boat launching, boat repair, and boat storage; except that marina does not mean temporary docks associated with riparian residential development if the mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.³⁰¹

Nonconforming use means any use of land established before the effective date of the ordinance from which this article was derived which does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

Ordinary high water mark means a mark 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 mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. In areas where the ordinary high water mark 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.

Riverway boundary means a legally described line delineating the landward extent of the St. Croix Riverway.

²⁹⁸ Code 1982, § 302.103

²⁹⁹ Ord 1997-21, 12/15/98

³⁰⁰ Code 1982, § 302.01; Res. No. 1997-16, § 18, 6-17-97, **Cross reference(s)**--Definitions generally, § 1-2.

³⁰¹ Ord 1997-15, 1/19/1999

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St. Croix Riverway means all lands and public waters within the riverway boundary subject to the standards and criteria for the Lower St. Croix National Scenic Riverway in the state.

Scenic easement means an interest in land, less than fee title, that limits the use of the land for the purpose of protecting the scenic, recreational, and natural characteristics of areas in the St. Croix Riverway. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: Perpetually held for the benefit of the people of Minnesota; specifically enforceable by its holder or any beneficiary; and binding on the holder of the servient estate, his heirs, successors, or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

Screening means the presence of vegetation or topography which makes any structure on any property visually inconspicuous in summer months as viewed from the river.

Slope means all lands between the ordinary high water mark and the riverway boundary having an angle of ascent or descent of more than 12 percent from the horizontal.

Structure means any building or appurtenance thereto, except transmission services.

Substandard structure means any structure established before the effective date of the ordinance from which this article was derived which is permitted within a particular zoning district but does not meet the structure setbacks or other dimensional standards of this article.

Variance means any modification or variation of the dimensional standards of this article where it is determined that, because of practical difficulties, strict enforcement of this article is impractical.³⁰²

Visually inconspicuous means difficult to see or not readily noticeable in summer months as viewed from the river.

Watercourse means a channel in which a flow of water occurs either continuously or intermittently. The term applies to either natural or artificially constructed channels.

Sec. 12-580. Substandard structures.

- A. All structures in existence prior to the adoption of the ordinance from which this article was derived which do not meet the structure setbacks and other dimensional standards of this article shall be considered substandard structures.
- B. Any extension, enlargement, or alteration of an existing substandard structure or sanitary facility shall meet the setback standards of this article.
- C. Exceptions to the setback standards for substandard structures may include the following:
 - 1. An extension, enlargement, or alteration of an existing substandard structure or sanitary facility may be permitted on the side of the structure or facility facing away from the river and/or bluffline.
 - 2. An improvement to an existing structure or facility may be allowed to extend laterally (parallel to the river or bluff) when the improvement is in compliance with the dimensional standards of this article and the side yard standards of the zoning ordinance, article II of this chapter.
 - 3. Exterior decks attached to the structure which do not extend any roof or foundation, may be permitted to extend laterally (parallel to the river or bluffline) at the same setback as the substandard structure if such deck is visually inconspicuous in summer months as viewed from the river, and provided the deck has no roof or building foundation.
 - 4. Substandard structures which do not meet the bluffland and/or shoreland setbacks shall not be raised in elevation or roofline, except in floodplain areas and then only to protect the structure.
- D. If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of this article.

³⁰² Ord 02-2014, 5/20/2014

Sec. 12-581. Substandard lots.³⁰³

- A. A lot or parcel of land for which a deed has been recorded in the office of the county recorder on or prior to May 1, 1974, shall be deemed a buildable lot provided:
 - 1. It has frontage on a maintained public right-of-way, maintained by the community or other unit of government, or frontage on a private road which was established prior to May 1, 1974;
 - 2. It is of record in the office of the county recorder prior to May 1, 1974;
 - 3. It can be demonstrated that a proper and adequate sewage disposal system can be installed;
 - 4. The proposed structure can meet the side yard setbacks of the zoning ordinance, article II of this chapter;
 - 5. The preexisting single lot or parcel area dimensions in the rural district shall meet or exceed 60 percent of all of the requirements for a new lot; or in the VHS district, the preexisting single parcel shall meet or exceed 22,500 square feet in area and shall meet or exceed all other dimensional requirements for a new lot in the VHS district.
- B. If in a group of contiguous platted lots under a single ownership, any individual lot does not meet the minimum requirements of this article, such lot cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots under the same ownership so that the combination of lots will:
 - 1. In the rural district equal one or more parcels of land each meeting the full requirements of this ordinance; or
 - 2. In the village historic site (VHS) district, equal a platted area of 22,500 square feet (three old village platted lots) or more, and all other new lot requirements as listed in Section 12-637.

Sec. 12-582. Color of structures.³⁰⁴

- A. The exterior color of new or renovated structures, including roofs, in the rural district, shall be of earth or summer vegetation tones, unless completely screened from the river by topography.
- B. The exterior color of new or renovated structures in the village historic site (VHS) district shall be consistent with the architectural standards for an historic village center as expressed in the City comprehensive plan and ordinances, provided the structure is screened by vegetation or topography, making it inconspicuous as viewed from the river during the summer months.

Sec. 12-583. Marinas.³⁰⁵

- A. New and or expanded marinas may only be allowed downstream from the northern city limits of Stillwater in urban districts.
- B. New marinas shall meet the design standards of natural resources regulations including Mn Rules, § 6105.0410, subp. z.
- C. No construction or development associated with a marina shall begin until all of the following authorizations have been obtained by the applicant.
 - 1. Marinas shall be a Conditionally Permitted Use in this article.
 - 2. For uses and structures above the ordinary high water mark associated with a marina, a public hearing shall be held by the Council to consider a marina as a Conditionally Permitted Use in accordance with Department of Natural Resources regulations including Mn Rules, § 6105.0530. The Council may approve or deny the marina on such standards of the Department of Natural Resources. If the Council approves the marina, final issuance of the local permit shall be conditioned upon granting of all state and federal permits required in department of natural resources regulations including Mn Rules, § 6105.0410.

³⁰³ Code 1982, § 602.02; Res. No. 1997-16, § 18, 6-17-97

³⁰⁴ Code 1982, § 604.02

³⁰⁵ Res 1997-16, § 18, 6-17-97; Ord 1997-15, 1/19/99; Ord 02-2012, 2/21/2012

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Sec. 12-584. Alterations in public waters.³⁰⁶

Changing the course, current, or cross section of public waters shall require state and federal permits as specified in Mn Rules, § 6105.0420 before any local permits may be issued.

Sec. 12-585. Transmission services.³⁰⁷

A permit from the commissioner is required pursuant to M.S.A. §§ 84.415 or 103G.245 before transmission services may cross state-owned lands or public waters and shall be in accordance with the natural resources regulations including Mn Rules, § 6105.0430.

Sec. 12-586. Public roads.³⁰⁸

A permit from the commissioner of natural resources is required before construction, reconstruction, removal, or abandonment of any road or railroad crossing of public waters within the riverway. Such permit shall be in accordance with the natural resources regulations including MN Rules, § 6105.0440.

Sec. 12-587. Requirements for sewage disposal.³⁰⁹

- A. Any premises intended for human occupancy must be provided with an adequate method of sewage disposal. Public or municipal collection and treatment facilities must be used where available and where feasible. Where public or municipal facilities are not available, all on-site individual sewer disposal systems shall conform to the minimum standards as set forth in Article IX, Section 12-637. A septic tank/drainfield system shall be the only acceptable system for installation unless it can be demonstrated that this system is not feasible on the particular lot in question and it can be demonstrated that the system being proposed as an alternate will not cause a pollution problem.
- B. No person shall install, alter, repair, or extend any individual sewer disposal system without first obtaining a permit therefore³¹⁰ from the Zoning Administrator for the specific installation, alteration, repair, or extension.

Sec. 12-588. Conflicting provisions.³¹¹

In the event of conflicting provisions in the text of this article, and/or other articles, the more restrictive provision shall apply. The Zoning Administrator shall determine which is more restrictive, and appeals from such determination may be made in the manner provided herein.

Sec. 12-589. Measurement of distances.³¹²

Unless otherwise specified, all distances set forth in this article shall be measured horizontally.

Secs. 12-590--12-635. Reserved.

DIVISION 2. DISTRICTS

Sec. 12-636. Designation of districts.

- A. For the purpose of protecting the natural resources and natural scenic values of the land within the boundaries of the Lower St. Croix Riverway and because there is a difference in development patterns, rural and village historic site (VHS) districts shall be established.

³⁰⁶ Res. No. 1997-16, § 18, 6-17-97

³⁰⁷ Res. No. 1997-16, § 18, 6-17-97

³⁰⁸ Res. No. 1997-16, § 18, 6-17-97

³⁰⁹ Code 1982, § 603.02, **Cross reference(s)**--Sewage, § 12-1901 et seq.

³¹⁰ Amendment 02-2009, 4/21/2009

³¹¹ Code 1982, § 301.01

³¹² Code 1982, § 301.03

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- B. The boundaries of the Lower St. Croix Riverway and the urban and rural zoning districts within the Riverway include all of the land riverward of the legally described boundary line in the official copy of the Lower St. Croix National Scenic Riverway Master Plan and as shown on the map designated as the City of Afton, Lower St. Croix Riverway zoning district map.
- C. The boundaries of the Lower St. Croix Riverway zoning district map designated as the City of Afton, Lower St. Croix Riverway District zoning map published herewith is made a part of this article and is on file with the Zoning Administrator.

Sec. 12-637. Minimum district dimensional requirements.³¹³

- A. The following chart sets forth the minimum area, setbacks, and other requirements of each district:

	Rural	VHS
Minimum lot size above ordinary high-water mark	5 acres	1 acre
Lot width at building setback line	200 feet	150 feet
Lot width at waterline	200 feet	150 feet
Building setback from ordinary high-water mark	200 feet	100 feet
Building setback from bluffline	100 feet	40 feet
On-site sewage treatment system setback from ordinary high-water mark	200 feet	100 feet
On-site sewage treatment system setback from bluffline	40 feet	40 feet
Maximum structure height	35 feet	35 feet
Maximum total lot area covered by impervious surface ³¹⁴	10% (1-1/2 acres)	20% or 4,350 s.f., whichever is greater ³¹⁵
On slopes less than 12 percent, the controlled vegetative cutting areas setback are from:		
Ordinary high water mark	200 feet	100 feet
Blufflines	40 feet	40 feet

- B. No structures shall be placed or grading done on any slopes greater than 12 percent (12 feet vertical rise in 100 feet horizontal distance).
- C. No structures shall be placed in any floodway. Structures proposed within a floodplain shall be consistent with city floodplain ordinance, article V of this chapter, and state floodplain ordinances.
- D. Exceptions to the minimal dimensional requirements include the following:
1. In rural districts, structure setbacks from a bluffline may be reduced up to a minimum of 40 feet when can be demonstrated that no change in the natural appearance of the shoreline, slope, and bluffline will occur and the structure will be visually inconspicuous in summer months as viewed from the river. In reviewing the proposed building site, the City Council, after input from the Zoning Administrator, and in cooperation with an agent of the commissioner of natural resources, and upon recommendation from the Planning Commission after public hearing, may determine that the structure setback can be varied to within the 40 to 100 foot range from a bluffline if the natural appearance of the shoreline, slope, and bluffline is preserved, and the applicant shall agree to donate a scenic easement to the state and maintain the scenic easement in an undisturbed condition and appearance. Such scenic easement shall specify that on all land lying from the proposed building line closest to the river, or property line closest to the river, or such lesser area subject to the easement as may be accepted by the commissioner, no destruction,

³¹³ Code 1982, § 302.104, Ord 97-46, 1/15/2002, Ord 46-2004, 8/17/2004

³¹⁴ Ord 05-2015, 9/15/2015

³¹⁵ Ordinance 02-2008, 1/9/2008

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- cutting, trimming, or removal of trees, shrubs, bushes, or plants, and no topographic changes of the natural landscape by excavation, drainage, filling, dumping or any other means shall occur without a written authorization from the commissioner of natural resources.
2. Permitted public facilities which by their nature require a location on or adjacent to the public waters and which also require approval of the commissioner of natural resources.
 3. Temporary or seasonal docks which extend into the water a minimum distance necessary for the launching or mooring of watercraft.
 4. Signs which are necessary for public health and safety or which designate areas available or not available for public use.
 5. Visually inconspicuous stairways and lifts enabling access to the river from steep slopes.
 6. On blufflines or shorelines with substandard adjacent structures on both sides of a vacant, substandard lot, any new structure on the vacant lot shall be setback the average setback of the adjacent structures plus 40 feet or the minimum standard setback, whichever is less.
 7. The maximum height limitations for churches and other places of worship shall be as follows:
 - a. A maximum height of thirty-five (35) feet for the occupied area of the structure;
 - b. A maximum height of fifty (50) feet for the structural elements;
 - c. A maximum height of sixty (60) feet for the following non-structural elements: spires or steeples, belfries or bell towers, cupolas, crosses or other religious symbols or decorative elements;

Secs. 12-638--12-700. Reserved.

DIVISION 3. USES

Sec. 12-701. Purpose.

The purpose of establishing standards and criteria for uses in the St. Croix Riverway shall be to protect and preserve existing natural, scenic, and recreational values, to maintain proper relationships between various land use types, and to prohibit new residential, commercial, or industrial uses that are inconsistent with the National Wild and Scenic Rivers Act, and the federal and state Lower St. Croix River Acts.

Sec. 12-702. Permitted uses.

All structures associated with the following uses are permitted in the St. Croix Riverway, subject to the dimensional requirements of this article:

- A. Conservancy.
- B. Agriculture.
- C. Single-family residential.

Sec. 12-703. Site preservation.

The following standards and criteria are provided to preserve vegetative and topographical screening, and to retard surface run-off, soil erosion, and nutrient loss.

Sec. 12-704. Vegetative cutting.

- A. On land within 200 feet of the ordinary high water mark in rural districts, 100 feet of the ordinary high water mark in urban districts, and 40 feet landward of blufflines and on slopes greater than 12 percent in all districts, there shall be no vegetative cutting of live trees or shrubs without a vegetative cutting permit from the City Zoning Administrator. A permit may be issued only if:
 1. The cutting, including topping, involves trees less than six inches in diameter at breast height;
 2. The cutting, including topping, involves vegetation which is not screening any structure from view from the river;
 3. The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained;

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4. Diseased trees are to be removed, and their removal is in the public interest; or
 5. The cutting is necessary for the maintenance of transportation or utility rights-of-way.
- B. A vegetative cutting permit is not required for the following provided the existing quality, character, density, and canopy is maintained as viewed from the river:
1. Clearing for a validly permitted structure, septic system, roadway, and parking areas.
 2. Maintenance trimming or pruning on a particular parcel or in transportation or utility rights-of-way.

Sec. 12-705. Grading and filling.

- A. Grading, filling, excavating, or otherwise changing the topography landward of the ordinary high water mark shall not be conducted without a grading permit from the City Zoning Administrator. A grading permit may be issued only if:
1. Slopes greater than 12 percent (12 feet vertical rise in 100 horizontal feet) are preserved to the greatest extent possible;
 2. Earthmoving, erosion, vegetative cutting, draining or filling of wetlands, and the destruction of natural amenities is minimized;
 3. The smallest amount of ground is exposed for as short a time as feasible;
 4. During construction, temporary ground cover, such as mulch is used and permanent ground cover, such as sod, is planted upon completion;
 5. Methods to prevent erosion and trap sediment are employed; and
 6. Fill is stabilized to accepted engineering standards.
- B. A separate grading and filling permit is not required for grading, filling, or excavating the minimum area necessary for a structure, sewage disposal system, and private road and parking area undertaken pursuant to a validly issued building permit.

Sec. 12-706. Conditionally Permitted Uses.³¹⁶

- A. *Determination.* Conditionally Permitted Uses are uses which normally are not permitted in the urban or rural districts of the St. Croix Riverway unless it is determined by the City Council, after a public hearing before the Planning Commission, that the proposed use shall:
1. Preserve the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river.
 2. Maintain safe and healthful conditions.
 3. Limit erosion potential of the site based on degree and direction of slope, soil type and vegetative cover.
- B. ³¹⁷*Urban district Conditionally Permitted Uses.* "Urban districts" shall mean village historic site (VHS) district conditional uses. In the VHS district, the Conditionally Permitted Uses listed in Section 12-578(C) may be permitted as conditional uses, in accordance with Section 12-578(B).
- C. *Rural district Conditionally Permitted Uses.* In rural districts of this article, the following uses may be permitted as Conditional Uses:
1. Governmental resource management and interpretative activities.
 2. Governmental highway waysides, rest areas, information areas and scenic overlooks.
 3. Marine services in the Riverway District.

Sec. 12-707. Prohibited uses.³¹⁸

In all districts within the St. Croix Riverway, the following new uses or expansion of existing uses shall be prohibited:

³¹⁶ Res. No. 1997-16, § 18, 6-17-97, (Ord 1997-15, 1/19/99

³¹⁷ Ord 05-2015, 9/15/2015

³¹⁸ Ord 02-2012, 2/21/2012; Ord 05-2015, 9/15/2015

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- A. Sand and gravel operations.
- B. Junkyards.
- C. Mobile home parks.
- D. Downhill ski areas.
- E. Marinas downstream from Stillwater in rural districts.
- F. All uses not authorized in the local zoning ordinances.

Sec. 12-708. Nonconforming uses.

Uses which are prohibited by this article but which are in existence prior to the effective date of the ordinance from which this article was derived shall be nonconforming uses and may continue as lawful, nonconforming uses. Such uses shall not be intensified, enlarged, or expanded beyond the permitted or delineated boundaries of the use, activity, or reclamation plan as stipulated in the most current permit issued prior to the adoption of the ordinance from which this article was derived.

Secs. 12-709--12-830. Reserved.

DIVISION 4. ADMINISTRATION

Sec. 12-831. Administrative procedure.³¹⁹

- A. In addition to the applicable administrative procedures set forth in the zoning ordinance, article II of this chapter, the following procedures shall be implemented with respect to land, subject to this article:
 - 1. A public hearing shall be held by the Planning Commission for all zoning district amendments, Conditional Use Permits, subdivision, and variances.
 - 2. No less than 20 days prior to the public hearing, the City Zoning Administrator shall send notice and copies of the applicants information as specified in Section 12-836 to the following agencies for review and comment:
 - a. Department of natural resources.
 - b. The Planning Commission.
- B. The applicant for any permit requiring a public hearing shall submit to the Council at least 30 days prior to such hearing, an abstractors certificate showing the names and addresses of all property owners within 500 feet of the affected, in incorporated areas, or one-half mile in unincorporated areas.
- C. Notice of the purpose, time, and place of any such public hearing shall be mailed to all property owners listed in Subsection (B) of this section by the local authority at least ten days prior to the date of the hearing.
- D. Notice of the purpose, time, and place of any such public hearing shall be published in the official newspaper of the affected community at least ten days prior to the date of the hearing.

Sec. 12-832. Certification by the commissioner.³²⁰

Before any zoning district or ordinance amendment becomes final, the Council shall forward the decision to the commissioner. The commissioner of natural resources shall certify in writing that the proposed action complies with the intent of the Wild and Scenic Rivers Acts and the master plan for the Lower St. Croix River in the manner specified in department of natural resources regulations, including MN Rules, § 6105.0540.

Sec. 12-833. Forwarding of a final decision.

The local Board of Adjustment and appeals shall forward decisions within ten days of final action on all conditional use permits and subdivisions to the commissioner of natural resources.

³¹⁹ Res 1997-16, § 18, 6-17-97; Ord 05-2015, 9/15/2015

³²⁰ Res 1997-16, § 18, 6/17/1997

Sec. 12-834. Permit process.

The permit process for urban and rural districts shall be as follows:

Permits	Urban District	Rural District
Building permits	LP	LP
Septic permits	LP	LP
Grading permits	LP	LP
Tree cutting permits	LP	LP
Conditional Use Permits ³²¹	PH-FD	PH-FD
Amendments to ordinance	PH-CC	PH-CC
Amendments to district boundary	PH-CC	PH-CC
Plats and cluster developments	PH-WA-FD	PH-WA-FD
Variances	PH	PH

- LP - Permit issued by the local authority in accordance with this article and all other local permits.
- CC - Certification by the commissioner of natural resources prior to final local approval.
- PH - Public hearing necessary by the local authority giving a 20-day notice of meeting to the commissioner of natural resources and other agencies listed in Section 12-831(A)(2).
- FD - Local authority forwards any decisions to the commissioner of natural resources within ten days after taking final action.
- WA - The commissioner of natural resources shall submit, after notice of public hearing and before the local authority gives preliminary approval, a written review and approval of the project.

Sec. 12-835. Variances.³²²

- A. Variances shall only be granted where there are practical difficulties which make the strict enforcement of this article impractical, and only when such variances are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the Comprehensive Plan. "Practical difficulties" as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.
- Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
 - Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
 - Essential Character: The variance, if granted, will not alter the essential character of the locality.
- B. Economic considerations alone shall not constitute a practical difficulty if a reasonable use of the property and associated structures exists under the conditions allowed by this article. In addition, no variance shall be granted that would permit any use that is prohibited in this article in which the subject property is located. Conditions may be imposed in the granting of a variance to insure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.
- C. The formal public hearing for a variance shall be held by the Planning Commission as set forth in the zoning ordinance, article II of this chapter.

Sec. 12-836. Requirements for public hearing.

The applicant shall submit sufficient copies of the following information and additional information if requested to the local authority 30 days prior to the public hearing on the application for a special use, variance, or subdivision:

³²¹ Ord 1997-15, 1/19/1999

³²² Ord 02-2014, 5/20/2014

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- A. Plat of survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, the ordinary high water mark, floodway, and floodplain.
- B. The most recent aerial photo of the property with property lines drawn in.
- C. Location of existing and proposed structures including height and setback dimensions.
- D. Location of existing and proposed alterations of vegetation and topography.
- E. Adjoining water-oriented uses.
- F. Suitability of the area for on-site waste disposal. Type, size, and location of the system shall be indicated. If a public or municipal wastewater collection and treatment system is to be utilized, the applicant must submit a written agreement from the municipality or sanitary authority indicating that the system has the capacity to handle the development.
- G. Water supply system.
- H. An estimate of permanent and transient residents.

Sec. 12-837. Factors considered.

When considering a proposal or zoning amendment within the St. Croix River District, the Council shall address the following items in making its decisions:

- A. Preserving the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river.
- B. The maintenance of safe and healthful conditions.
- C. The prevention and control of water pollution, including sedimentation.
- D. The location of the site with respect to floodways, floodplains, slopes, and blufflines.
- E. The erosion potential of the site based on degree and direction of slope, soil type, and vegetative cover.
- F. Potential impact on game and fish habitat.
- G. Location of the site with respect to existing or future access roads.
- H. The amount of wastes to be generated and the adequacy of the proposed disposal systems.
- I. The anticipated demand for police, fire, medical, and school services and facilities.
- J. The compatibility of the proposed development with uses on adjacent land.

Secs. 12-838--12-900. Reserved.

ARTICLE V. FLOODPLAIN REGULATIONS

DIVISION 1. GENERALLY

Sec. 12-901. Statutory authorization.

The legislature of the State of Minnesota has, in Minnesota Statutes, Chapters 103F and 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Afton, Minnesota does ordain as follows:

Sec. 12-902. Findings of Fact.

- A. The flood hazard areas of the City of Afton are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. Methods Used to Analyze Flood Hazards. This article is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.
- C. National Flood Insurance Program Compliance. This Article 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.

Sec. 12-903. Statement of Purpose.

It is the purpose of this Article to promote the public health, safety, and general welfare and to minimize those losses described in Section 12-902(A) by provisions contained herein.

Sec. 12-904. Scope of application.

Lands to Which Ordinance Applies: This Article shall apply to all lands within the jurisdiction of the City of Afton shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

Sec. 12-905. Establishment of Official Zoning Map.

The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this Article. The attached material shall include the Flood Insurance Study, Washington County, Minnesota And Incorporated Areas and Flood Insurance Rate Map Panels therein numbered 27163C0354E, 27163C0355E, 27163C0358E, 27163C0361E, 27163C0362E, 27163C0365E, 27163C0366E, 27163C0367E, 27163C0368E, 27163C0369E, 27163C0430E, 27163C0431E, and 27163C0432E, all dated February 3, 2010 and prepared by the Federal Emergency Management Agency. The Official Zoning Map shall be on file in the Office of the Afton City Clerk and the Zoning Administrator.

Sec. 12-906. Regulatory Flood Protection Elevation.

The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Sec. 12-907. Interpretation.

- A. In their interpretation and application, the provisions of this Article shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- B. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile, the ground elevations that existed on the site at the time the Community adopted its initial floodplain ordinance or on the date of the first National Flood Insurance Program map showing the area within the 100-year floodplain if earlier, and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.

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Sec. 12-908. Abrogation and Greater Restrictions.

It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail. All other ordinances inconsistent with this Article are hereby repealed to the extent of the inconsistency only.

Sec. 12-909. Warning and Disclaimer of Liability.

This Article does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Article shall not create liability on the part of the City of Afton or any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

Sec. 12-910. Severability.

If any section, clause, provision, or portion of this Article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Article shall not be affected thereby.

Sec. 12-911. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Article its most reasonable application.

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:

Accessory Use or Structure - a subordinate building or structure which is located on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

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.

Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a finding that:

- A. Certain conditions as detailed in the zoning ordinance exist.
- B. The structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain 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 Flow Line – means general direction the flow of the flood water

Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Washington County, Minnesota and Incorporated Areas.

Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

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Flood Proofing - 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 - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

Manufactured Home - 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."

Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain 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.

Principal Use or Structure - means the main use of land or main structure erected on the land for an activity which is an allowable use in the zoning district in which the land is located.

Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Recreational Vehicle - 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 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 Article, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

Regional Flood - 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 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

Regulatory Flood Protection Elevation - shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Structure - 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, 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 - 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.

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- B. Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this Article, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.

*Variance*³²³ - means a modification of a specific permitted development standard required in an official control including this Article to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a practical difficulty as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

Sec. 12-912. Nonconforming Uses.

- A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Article but which is not in conformity with the provisions of this Article may be continued subject to the following conditions. Historic structures, as defined in Section 12-911 of this Article, shall be subject to the provisions of Section 12-912.A.1 – Section 12-912.A.5 of this Article.
1. No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.
 2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in 12-912(3) and 12-913(6) below.
 3. The cost of all structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Division 2, Subdivision II and Subdivision III of this Article for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
 4. If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Article. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.
 5. If any nonconforming use or structure is substantially damaged, as defined in Section 12-911 of this Article, it shall not be reconstructed except in conformity with the provisions of this Article. The applicable provisions for establishing new uses or new structures in Division 2, Subdivisions II-IV will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.
 6. If a substantial improvement occurs, as defined in Section 12-911 of this Article, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Division 2, Subdivision II or III of this Article for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.

Sec. 12-913. Manufactured homes, mobile homes, travel trailers, etc., prohibited.

Manufactured homes, manufactured home parks, mobile homes, mobile home parks, travel trailers and travel vehicles and travel trailer and travel vehicle parks and campgrounds shall not be permitted in any floodplain within the City.

Sec. 12-914. Penalties for Violation.

- A. Violation of the provisions of this Article 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) shall constitute a misdemeanor and shall be punishable as defined by law.

³²³ Ord 02-2014, 5/20/2014

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- B. Nothing herein contained shall prevent the City of Afton from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include but are not limited to:
1. In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government 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 Community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
 2. When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.
 3. The Zoning Administrator shall notify the suspected party of the requirements of this Article and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either: (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.
 4. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Article and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Article.

Sec. 12-915. Annexations.

The Flood Insurance Rate Map panels adopted by reference into Section 12-905 above may include floodplain areas that lie outside of the corporate boundaries of the City of Afton at the time of adoption of this Article. If any of these floodplain land areas are annexed into the City of Afton after the date of adoption of this Article, the newly annexed floodplain lands shall be subject to the provisions of this Article immediately upon the date of annexation into the City of Afton.

Sec. 12-916. Amendments.

The floodplain designation on the Official Zoning Map shall 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 Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Article, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Article and said notice shall include a draft of the Ordinance amendment or technical study under consideration.

DIVISION 2. FLOODPLAIN DISTRICT

Subdivision I. Generally

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Sec. 12-917. Establishment of Districts.

- A. Floodway District. The Floodway District shall include: 1) those areas designated as floodway on the Flood Insurance Rate Map adopted in Section 12-905; and 2) those areas designated as Zone AE on the Flood Insurance Rate Map adopted in Section 12-905 that lie below the ordinary high water level of the St. Croix River as defined in Minnesota Statute, Section 103G.005, subd. 14, except as further modified in Section 12-917 of this Article.
- B. Flood Fringe District. The Flood Fringe District shall include: 1) those areas that are designated as Zone AE on the Flood Insurance Rate Map adopted in Section 12-905 that lie outside of a delineated floodway; and 2) those areas designated as Zone AE on the Flood Insurance Rate Map as adopted in Section 12-905 that lie above the ordinary high water level of the St. Croix River as defined in Minnesota Statute 103G.005, subd. 14 and that lie below the 100-year flood elevation, except as further modified in Section 12-917 of this Article.
- C. General Flood Plain District. The General Flood Plain District shall include those areas on the Flood Insurance Rate Map adopted in Section 12-905 shown as Zone A, Zone AE without a delineated floodway and Zone AE areas that are adjacent to the mouth of Valley Branch Creek generally defined as downstream of St. Croix Trail South to the point where the channel of Valley Branch Creek enters the main channel of the St. Croix River.

Sec. 12-918. Compliance.

No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this Article and other applicable regulations which apply to uses within the jurisdiction of this Article. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Division 1, Subdivision II - III that follow, respectively, shall be prohibited. In addition, a caution is provided here that:

- A. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are not permitted in any floodplain within the City.³²⁴
- B. Modifications, additions, structural alterations, normal maintenance and repair, or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Article and specifically Section 12-912.
- C. As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Article and specifically as stated in Division 5 of this Article.

Sec. 12-919 - 12-1000. Reserved.

Subdivision II. Floodway District (FW).

Sec. 12-1001. Permitted Uses.³²⁵

- A. General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- B. Industrial-commercial loading areas and parking areas.
- C. Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, fish hatcheries, hunting and fishing areas, and single or multiple purpose recreational trails.

³²⁴ Code 1982, § 306.901, Cross reference(s) – Building and building regulations, § 12-1771 et seq.

³²⁵ Ord 05-2015, 9/15/2015

- D. Residential lawns, gardens, parking areas, and play areas.

Sec. 12-1002. Standards for Floodway Permitted Uses.

- A. The use shall have a low flood damage potential.
- B. The use shall be permissible in the underlying zoning district if one exists.
- C. The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

Sec. 12-1003. Conditional Uses.

- A. Structures accessory to the uses listed in Section 12-1001 above and the uses listed in 2-7 below.
- B. Extraction and storage of sand, gravel, and other materials.
- C. Marinas, boat rentals, docks, piers, wharves, and water control structures.
- D. Railroads, streets, bridges, utility transmission lines, and pipelines.
- E. Storage yards for equipment, machinery, or materials.
- F. Placement of fill or construction of fences.
- G. Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency flood event.

Sec. 12-1004. Standards for Floodway Conditional Uses.

- A. All Uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.
- B. All floodway conditional uses shall be subject to the procedures and standards contained in Section 12-1021 of this Article.
- C. The conditional use shall be permissible in the underlying zoning district if one exists.
- D. Fill:
 - 1. Fill, dredge spoil, and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.
 - 2. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.
 - 3. As an alternative, and consistent with Subsection (B) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Governing Body has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the Office of the County Recorder.
- E. Accessory Structures:
 - 1. Accessory structures shall not be designed for human habitation.

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2. Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:
 - a. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and,
 - b. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
3. Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size at its largest projection, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards:
 - a. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - b. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and
 - c. To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

F. Storage of Materials and Equipment:

1. 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.
2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.

G. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

H. A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

Subdivision III. Flood Fringe District (FF).

Sec. 12-1005. Permitted Uses.

Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All permitted uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 12-1006 and the "Standards for all Flood Fringe Uses" listed in Section 12-1009.

Sec. 12-1006. Standards for Flood Fringe Permitted Uses.

- A. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the regulatory flood protection elevation and the fill shall extend in all directions at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

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- B. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet at its largest projection may be internally flood proofed in accordance with Section 12-1004(5) (C).
- C. The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 12-1006 of this Article.
- D. The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation.
- E. The provisions of Section 12-1009 of this Article shall apply.

Sec. 12-1007. Conditional Uses.

Any structure that is not elevated on fill or flood proofed in accordance with Section 12-1006(A) and (B) and or any use of land that does not comply with the standards in Section 12-1006 (C) and (D) shall only be allowable as a conditional use. An application for a conditional use shall be subject to the standards and criteria and evaluation procedures specified in Sections 12-1008 through 12-1009 and 12-1021 of this Article.

Sec. 12-1008. Standards for Flood Fringe Conditional Uses.

- A. Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:
 - 1. Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
 - 2. Specific Standards for Above-grade, Enclosed Areas - Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate:
 - a. A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - b. That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.
- B. Basements, as defined by Section 12-911 of this Article, shall be subject to the following:
 - 1. Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - 2. Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with Section 12-1008 (C) of this Article.
- C. All areas of non residential structures including basements to be placed below the regulatory flood protection elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification

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in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

- D. When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.
- E. Storage of Materials and Equipment:
 - 1. 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.
 - 2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Governing Body.
- F. The provisions of Section 12-1009 of this Article shall also apply.

Sec. 12-1009. Standards for All Flood Fringe Uses.

- A. All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.
- B. Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood.
- C. Manufacturing and Industrial Uses - measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 12-1009(B) above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
- D. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- E. Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

Subdivision IV. General Flood Plain District.

Sec. 12-1010. Permissible Uses.

- A. The uses listed in Section 12-1001 of this Article shall be permitted uses.
- B. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 12-1011 below. Division 2, Subdivision II shall apply if the proposed use is in the Floodway District and Division 2, Subdivision III shall apply if the proposed use is in the Flood Fringe District.

Sec. 12-1011. Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District.

- A. Upon receipt of an application for a permit or other approval within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the Floodway or Flood Fringe District.
 - 1. A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - 2. Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.
 - 3. Photographs showing existing land uses, vegetation upstream and downstream, and soil types.
 - 4. Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.
- B. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - 1. Estimate the peak discharge of the regional flood.
 - 2. Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - 3. Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A stage increase less than .5' shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- C. The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Division 2, Subdivisions II and III of this Article.

DIVISION 3. SUBDIVIDING PROPERTY.

Sec. 12-1012. Land Suitability Review Criteria.

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No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall be able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Article and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

Sec. 12-1013. Requirements for Floodway/Flood Fringe Determinations in the General Flood Plain District.

In the General Flood Plain District, applicants shall provide the information required in Section 12-1011 of this Article to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the regulatory flood protection elevation for the subdivision site.

Sec. 12-1014. Removal of Special Flood Hazard Area Designation.

The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

DIVISION 4. PUBLIC SERVICES.

Sec. 12-1015. Public Utilities.

All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood proofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation.

Sec. 12-1016. Public Transportation Facilities.

Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Division 2, Subdivisions II and III of this Article. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation 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.

Sec. 12-1017. On-site Sewage Treatment and Water Supply Systems.

Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

DIVISION 5. ADMINISTRATION.

Sec. 12-1018. Zoning Administrator.

A Zoning Administrator or other official designated by the Governing Body shall administer and enforce this Article. If the Zoning Administrator finds a violation of the provisions of this Article the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12-914 of this Article.

Sec. 12-1019. Permits, Certification Requirements and Record Keeping.

- A. **Permit Required.** A Permit issued by the Zoning Administrator in conformity with the provisions of this Article shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.
- B. **Application for Permit.** Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- C. **State and Federal Permits.** Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.
- D. **Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use.** It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Article.
- E. **Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance.** Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Article, and punishable as provided by Section 12-914 of this Article.
- F. **Certification.** The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Article. Flood proofing measures shall be certified by a registered professional engineer or registered architect.
- G. **Record of First Floor Elevation.** The Zoning Administrator shall 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 flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.
- H. **Notifications for Watercourse Alterations.** The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- I. **Notification to FEMA When Physical Changes Increase or Decrease the 100-year Flood Elevation.** As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

Sec. 12-1020. Appeals and Variances/Duties of the Board of Adjustment.³²⁶

³²⁶ Ord 02-2014, 5/20/2014

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- A. Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State law.
- B. Administrative Review. The Board of Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Article.
- C. Variances. The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Article as will not be contrary to the public interest and only for practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Article, any other zoning regulations in the Community, and in the respective enabling legislation that justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, 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. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:
 - 1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - 2. Variances shall 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 practical difficulties for the applicant, as defined and elaborated upon in a community's respective planning and zoning enabling legislation, 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 ordinances.
 - 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board of Adjustment shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.
- F. Decisions. The Board of Adjustment shall arrive at a decision on such appeal or variance within 60 days. In passing upon an appeal, the Board of Adjustment may, so long as such action is in conformity with the provisions of this Article, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a variance the Board of Adjustment may prescribe appropriate conditions and safeguards such as those specified in Section 12-1021, which are in conformity with the purposes of this Article. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Article punishable under Section 12-914. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- G. Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this community's official controls and also by Minnesota Statutes.
- H. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall 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 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

Sec. 12-1021. Conditional Uses-Standards and Elevation Procedures.

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The Afton City Council shall hear and decide applications for conditional uses permissible under this Article. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

- A. Hearings. Upon filing with the City of Afton an application for a conditional use permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed conditional use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.
- B. Decisions. The City Council shall arrive at a decision on a conditional use within 60 days after the public hearing. In granting a conditional use permit the City Council shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 12-1021(C)(6), which are in conformity with the purposes of this Article. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be deemed a violation of this Article punishable under Section 12.914. A copy of all decisions granting conditional use permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- C. Procedures to be followed by the City Council in Passing on Conditional Use Permit Applications within all Flood Plain Districts.
 1. Require the applicant to furnish such of the following information and additional information as deemed necessary by the City Council for determining the suitability of the particular site for the proposed use:
 - a. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the stream channel; and
 - b. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
 2. Transmit one copy of the information described in Subsection (A) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
 3. Based upon the technical evaluation of the designated engineer or expert, the City Council shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.
 4. Factors Upon Which the Decision of the City Council Shall Be Based. In passing upon conditional use applications, the City Council shall consider all relevant factors specified in other sections of this Article, and:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - l. Such other factors which are relevant to the purposes of this Article.
 5. Time for Acting on Application. The City Council shall act on an application in the manner described above within 60 days from receiving the application, except that where additional information is required

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pursuant to Section 12-1021(C) of this Article. The City Council shall render a written decision within 60 days from the receipt of such additional information.

6. **Conditions Attached to Conditional Use Permits.** Upon consideration of the factors listed above and the purpose of this Article, the City Council shall attach such conditions to the granting of 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. Modification of waste treatment and water supply facilities.
 - b. Limitations on period of use, occupancy, and operation.
 - c. Imposition of operational controls, sureties, and deed restrictions.
 - d. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - e. Flood proofing measures, in accordance with the State Building Code and this Article. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

Sec. 12-1022 – 12-1250. Reserved.

ARTICLE VI. SUBDIVISIONS³²⁷

DIVISION 1. GENERALLY

Sec. 12-1251. Purpose of article.³²⁸

The City of Afton is in Washington County, on the eastern edge of the St. Paul-Minneapolis area. The southwestern portion of the City is largely agricultural and the remainder is largely rural residential. In its comprehensive development plan the City's goals are stated as retention of the rural and residential nature of the City and preservation of the natural environment. To these ends ordinances have been passed which encourage low density housing, the continued farming of productive agricultural land and the avoidance of any developments which might necessitate central sewer and water systems and other urban services. Like its other ordinances, the City's subdivision regulations reflect the City's goals and serve as means for achieving them.

Sec. 12-1252. Basis of need.³²⁹

- A. In the past land has been bought and sold using metes and bounds descriptions, but now with smaller parcels being bought and sold the practice of describing them by metes and bounds is no longer practical.
- B. Many metes and bounds descriptions, past and present, written by unqualified people do not properly describe conveyance of land. Overlaps and gaps have been created by these poor descriptions and can only be corrected by the courts. Descriptions based on a good boundary survey can be checked, therefore the record plat is a highly desirable instrument. The underlying description of the property to be platted can be adjusted or corrected, based on a boundary survey. The recorded plat then becomes a legal document denoting lots and blocks as the subdivision of the described tract of land. Clean, simple and accurate conveyances can then be made and described as Lot, Block-Plat Name.
- C. The present platting system was established to provide a simple system for keeping records of the division and ownership of land. State statutes give the registered land surveyor exclusive rights to prepare plats. The statutes also set minimum standards that the surveyor must meet, and regulate the plat itself, as to information required, size, number and kind. The reader is referred to M.S.A. chapter 505 and the standard procedures for platting in the county.

³²⁷ **Cross references**—Subdivision requirements for shoreland management, § 12-501 et seq.; floodplain regulations, § 12-901 et seq.; subdivision requirements for floodplain district, § 12-1201 et seq.; utilities, ch. 24.

State law reference—Authority to regulate the subdivision of land, M.S.A. § 462.358.

³²⁸ Code 1982, § 305.100

³²⁹ Code 1982, § 305.101

Sec. 12-1253. Basic procedures.³³⁰

- A. Prior to the preparation of a plat, the subdividers or owners shall meet with local officials, with the planning staff and City Engineer in order to be made fully aware of all applicable ordinances, regulations, and plans in the area to be subdivided. At this time the subdivider should submit a general sketch plan of the proposed subdivision to the Planning Commission and the relevant subcommittees. The sketch plan can be presented in such form as to show that consideration has been given to the neighboring subdivisions, adjacent land and to the topography of the site. The subdivider is urged to avail himself of the advice and assistance of the City Administrator, planning consultant, and other advisors in order to save time and effort and facilitate the approval of the plat.
- B. Upon agreement in concept of the sketch plan by the Planning Commission, the subdivider may prepare a preliminary plat for the area to be subdivided.
- C. The preliminary plat is a very detailed drawing showing the proposed development and necessary information. It contains more details than is required on the sketch plan and serves as the basis for the public hearing. It also serves as the master plan for a development where subdividing a piece of land is carried out step-by-step, by a series of plats, where the first plat which is approved and recorded may be only part of the total plan and may later be followed by other plats, all in conformity with the overall plan.
- D. After the preliminary plat is approved, the subdivider will have his surveyor prepare a final plat covering all or part of the land to be subdivided. The final plat is a legal document designed primarily to record in the county offices the exact boundaries and location of parcels of land. Before the City will approve the plat, it will usually require the subdivider to agree to do certain things, such as pave streets. The City will make sure that all such matters are agreed to by the subdivider, and are covered as necessary by written contract, and by bond, before the plat is approved.

Sec. 12-1254. Purpose.³³¹

- 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 growth of any community. Few activities have a more lasting effect upon its appearance and environment. Once the land has been subdivided into lots and the streets, homes, and other structures have been constructed, the basic character of this permanent addition to the community 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 in order that various public services may be provided.
- B. The welfare of the entire community 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.
- C. 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 adequate standards for design and construction.
 - 2. Provide for the health and safety of residents by requiring properly designed streets and adequate sewage and water service.
 - 3. Place the cost of improvements against those benefitting from their construction.
 - 4. Secure the rights of the public with respect to public lands and waters.
 - 5. Set the minimum requirements necessary to protect the public health, safety, comfort, convenience, and general welfare.

Sec. 12-1255. Scope.³³²

³³⁰ Code 1982, § 305.102; Res. No. 1997-16, § 20, 6-17-97

³³¹ Code 1982, § 305.201

³³² Code 1982, § 305.301

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The rules and regulations governing plats and subdivision of land contained herein shall apply within the City and other land as permitted by state statutes. Upon overlapping jurisdiction within the prescribed area, the extent of jurisdiction shall be determined and agreed upon between the City and the other municipality or municipalities concerned. Except in the case of resubdivision, this article shall not apply to any lot or lots forming a part of a subdivision recorded in the office of the county recorder prior to the 1972 effective date of the county first subdivision ordinance, nor is it intended by this article to repeal, annul or in any way impair or interfere with existing provisions of other laws or ordinances except those specifically repealed by, or in conflict with this article, or with private restrictions placed upon property by deed, covenant, or other private agreement, or with restrictive covenants governing the land. Where this article imposes a greater restriction upon the land than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this article shall control.

Sec. 12-1256. Definitions.³³³

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 "person" includes a corporation, a partnership and an incorporated association of persons such as a club; "shall" is always mandatory; a "building" includes a "structure;" a "building" or "structure" includes any part thereof; "used" or "occupied" as applied to any land or building shall be construed to include the word "intended, arranged, or designed to be used or occupied."

Alley means any dedicated public right-of-way providing a secondary means of access to abutting property.

Applicant means the owner of land proposed to be subdivided or his representative. Written consent for subdivision shall be required from the legal owner of the property before the sketch plan is submitted.

Arterial, minor, means a road intended to move through and from adjacent subregions and activity centers with subregions.

Block means the enclosed area within the perimeter of roads, property lines or boundaries of the subdivision.

Boulevard means the portion of the street right-of-way between the curb line and the property line.

Butt lot means a lot at the end of a block and located between two corner lots.

City attorney means the attorney employed by the City.

City Engineer means the registered engineer employed by the City.

Cluster development means a subdivision development planned and constructed so as to group housing units into relatively tight patterns while providing a unified network of open space and wooded areas, and meeting overall density regulations of this article and the zoning ordinance, article II of this chapter. Cluster developments are not permitted under this article.

Collector street means a street which carries traffic from minor streets to thoroughfares or from thoroughfare to thoroughfare. It includes the principal entrance streets of a residential development and for circulation within such a development.

Community means the City of Afton.

Comprehensive development plan means a comprehensive plan prepared by the City including a compilation of policy statements, goals, standards and maps indicating the general locations recommended for the various functions and classes of land use, places and structures, and for the general physical development of the City and includes any unit of part of such plan or parts thereof.

Contour map means a map which irregularities of land surface are shown by lines connecting points of equal elevations. Contour interval is the vertical height between contour lines.

³³³ Code 1982, §§ 305.401, 305.402; Res 1997-16, § 20, 6-17-97, **Cross reference(s)**--Definitions generally, § 1-2.

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Copy means a print or reproduction made from a tracing.

County means Washington County, Minnesota.

County board means the Washington County Board of Commissioners.

Cul-de-sac means a street or portion of a street with one vehicular entrance/outlet leading directly to a through street, and having one turnaround at a single termination.

Developer means the owner of land proposed to be subdivided or his representative. Written consent for subdivision shall be required of the legal owner of the land.

Development means the act of subdividing land, installing site improvements and/or building structures.

Development agreement means the contract between the subdivider and the City which requires the subdivider to furnish and construct at his sole cost any streets or other improvements according to approved plans and specifications, and to comply with all conditions of the plat approval. The City shall require the development agreement to be recorded.

Double frontage lots means lots which have a front line abutting on one street and a back or rear line abutting on another street.

Drainage course means a watercourse or indenture for the drainage of surface water.

Easement means a grant by an owner of land for a specific use by persons other than the owner.

Escrow means a deposit of cash with the City to guarantee the subdivider's contractual obligations to the City. Such escrow funds may be deposited by the City treasurer into regular city accounts but shall be accounted for separately for the purposes specified in the development agreement.

Final plat means the map or plan or record of a subdivision and any accompanying material as described in these regulations. The legal document which must be recorded and must conform to all Minnesota state laws.

Governing body means the City Council.

Grade means the slope of a road, street, or other public way, specified in percentage (%) terms.

Individual sewage disposal system means a sewage treatment system or part thereof, serving a dwelling or other establishment, consisting of one or more septic tanks and a soil treatment system.

Local road or street means a road intended to provide access to other roads from individual properties.

Lot, corner, means a lot situated at the intersection of two streets, the interior angle of such intersection not exceeding 135 degrees.

Major subdivision means all subdivisions not classified as minor subdivisions, including but not limited to subdivisions of four or more lots, or any size subdivision requiring any new street or extension of the local government facilities, or the creation of any public improvements. Major subdivisions must be platted in accordance with this article.

Marginal access street (service road) means a minor street parallel to and adjacent to high volume arterial streets and highways, which provide access to abutting properties and protection of through traffic.

Metes and bounds means a method of describing land by measure of length (metes) of the boundary lines (bounds). Most common method is to recite direction and length of each line as one would walk around the perimeter. In general, the "metes" and "bounds" can be recited by reference to record, natural or artificial monuments at the corners; and record, natural or cultural boundary lines.

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Minimum subdivision design standards means the guides, principles, and specifications for the preparation of subdivision plans indicating among other things, the minimum and maximum dimensions of the various elements set forth in the plan.

Minor subdivision means any subdivision containing not more than three lots fronting on an existing street, not involving any new street or road, or the extension of municipal facilities, or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provisions or portion of the master plan, official map, the zoning ordinance, article II of this chapter, or these regulations.

Natural waterway means a natural passageway in the surface of the earth so situated and having such a topographical nature that surface water flows through it from other areas before reaching a final ponding area. The term also includes all drainage structures that have been constructed or placed for the purpose of conducting water from one place to another.

Nonresidential subdivision means a subdivision whose intended use is other than residential, such as commercial or industrial. Such subdivision shall comply with the applicable provisions of these regulations.

Outlot means a lot remnant or any parcel of land included in a plat, which may be used as open space. Such outlot may be a large tract that could be subdivided in the future or may be too small to comply with the minimum size requirements of zoning and subdivision ordinances or otherwise unsuitable for development and therefore not usable as a building site. When an outlot is created, the City shall require a development agreement. Outlots are not permitted in subdivisions having cul-de-sac streets.³³⁴

Owner means an individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

Pedestrian way means a public right-of-way across or within a block, to be used by pedestrians.

Person means any individual, firm, association, syndicate or partnership, corporation, trust or any other legal entity.

Planner means the planner employed by the community unless otherwise stated.

Planning Commission means the Afton City Planning Commission.

Plat means a map or drawing which graphically delineates the boundary of land parcels for the purpose of identification and record of title. The plat is a recorded legal document and must conform to all state laws.

Preliminary plat means the preliminary drawing or drawings, described in these regulations, indicating the proposed manner or layout of the subdivision to be submitted to the City Council for approval. Preliminary plat shall contain data required as outlined in Section 12-1328.

Protective covenants means contracts entered into between private parties and constituting a restriction on the use of all private property within a subdivision for the benefit of the property owners and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values.

Reserve strips means a narrow strip of land placed between lot lines and streets to control access.

Re-subdivision means a change in a map of an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Right-of-way means the land covered by a public road or land dedicated for public use or for certain private use such as land over which a power line passes.

Road, dead-end, means a road or a portion of a street with only one vehicular-traffic outlet.

³³⁴ **Cross reference(s)**—Cul-de-sac streets, § Sec. 12-1379(C)

Rural design street means a street utilizing road side ditches, swales, or other methods to handle stormwater runoff. The construction of this type of road shall be chosen based on the area to be developed, existing and proposed topography, drainage considerations, traffic projections and other features at the recommendation of the City Engineer.

Simple subdivision. See Section 12-1261.

Sketch plan means a sketch preparatory to the application for a plat or a minor lot subdivision to enable the subdivider to save time and expense in reaching general agreement with the City as to the form of the plat and the objectives of these regulations. The plan must comply with the comprehensive plan and these regulations.

Street means a way for vehicular traffic, whether designated as street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place, drive, court, or otherwise designated.

Street width means the shortest distance between the lines delineating the right-of-way of a street.

Subdivider means the owner, agent or person having control of such land as the term is used in this article.

Subdivision identification sign/monument means a permanent structure identifying the existence of a subdivision, usually placed at an entrance/exit to the subdivision. Such subdivision identification signs are prohibited.

Survey, land, means the process of determining boundaries and areas of tracts of land by a registered surveyor. The term cadastral survey is sometimes used to designate a land survey, but in this country its use should be restricted to the surveys of public lands of the United States; also called property survey, boundary survey.

Surveyor means a land surveyor registered under state laws.

Thoroughfare means a street primarily designated to carry large volumes of traffic and provide for vehicular movement between and among large areas; usually designated as a trunk highway or county road.

Urban design street means a street which has concrete curb and gutter to direct stormwater runoff to a storm sewer conveyance system. The construction of this type of road shall be chosen based on the area to be developed, existing topography, drainage considerations, traffic projects, and other features at the recommendation of the City Engineer.

Vicinity map means a map drawn to comparatively small scale which definitely shows the area proposed to be platted in relation to known geographical features, i.e., town centers, lakes, roads.

Zoning ordinance means a zoning ordinance or resolution controlling the use of land as adopted by the City Council being article II of this chapter.

Sec. 12-1257. Protection of natural features.³³⁵

- A. The City Council reserves the right to decline approval of a subdivision if due regard is not shown for the preservation of all natural features such as large trees, watercourses, scenic points, historical spots and similar city assets which, if preserved, will add attractiveness and stability to the proposed development of the property.
- B. Subdivision review shall be coordinated with the requirements and procedures for environmental assessment and impact statements contained in the zoning ordinance, article II of this chapter. Any mandatory environmental assessment worksheet or impact statement as required by the state environmental quality board regulations shall be submitted as part of the application for preliminary plat approval.

Sec. 12-1258. Solar access planning.³³⁶

All new subdivisions should be designed to accommodate extensive use of passive and active solar energy systems with special attention given to street, lot and building orientation.

³³⁵ Code 1982, § 305.1001

³³⁶ Code 1982, § 305.1002

Sec. 12-1259. Public sites and open spaces.³³⁷

- A. *Public sites to be reserved.* Where a proposed drainageway, park, playground, school site or other public site, as shown on the comprehensive development plan is embraced in part or in whole by the boundary of a proposed subdivision and such public sites are not dedicated, such sites shall be reserved and no action taken towards approval of a plan or plat for a period not to exceed 90 days to allow the proper governmental agency the opportunity to consider and take actions towards acquisition of such public ground or park by purchase or other methods.
- B. *Scenic easements.* Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service.
- C. *Park fees.* A park fee shall be paid by the builder of each dwelling unit as provided in Section 12-1270.

Sec. 12-1260. Minor subdivision.³³⁸

- A. In the case of a subdivision resulting in three or fewer parcels, each having the required frontage on an improved public road, the City Council may, upon recommendation of the Planning Commission, exempt the subdivider from platting; however, each newly created parcel shall meet all requirements of the zoning ordinance, article II of this chapter.
- B. In the case of a request to subdivide a lot which is part of a recorded plat, or where the subdivision is to permit the adding of a parcel of land to an abutting lot, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or the zoning ordinance, article II of this chapter, the division may be approved by the City Council after review by the Planning Commission.
- C. Submission of a certified survey by a registered land surveyor showing the original lot and the proposed subdivision shall be required. The survey shall show topographic data at ten-foot contour intervals, driveway access points, drainage plans, soil tests for the installation of an on-site septic system, verification of 2.5 acres of buildable land, and proposed location of dwelling unit and names and addresses of all property owners within 500 feet of the proposed subdivision.
- D. The City Council reserves the right to require the dedication of utility easements, scenic easements and right-of-way for existing streets or roads prior to approval of the minor subdivision.
- E. Any parcel created by a minor subdivision shall not be eligible for further minor subdivision without platting.
- F. The division of land where all resulting parcels exceed 20 acres and 500 feet in width shall not constitute subdivision under this article. Parcels exempt from subdivision approval are still subject to all other zoning and building requirements.
- G. Before an Administrative Permit is issued on any lot resulting from a minor subdivision, the applicant shall include on the site plan the proposed route for the underground utility lines for electricity, telephone, cable, and gas where available, and shall submit with the application a certification from each utility company involved that the lines can safely be placed along the proposed route.
- H. The Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give not less than ten days nor more than 30 days notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a description of the land and any requested variances. The notice should specify that any variances identified during the minor subdivision process will be considered at the hearing. At least ten days before the hearing, the City Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question.

³³⁷ Code 1982, § 305.1003

³³⁸ Code 1982, § 305.1004; Res 1997-16, § 20, 6-17-97, Ord 14-2004, 10/19/2004

Sec. 12-1261. Simple subdivision.³³⁹

- A. A simple subdivision is the resubdivision and transfer of property for the purpose of combining it with an adjoining property which does not result in a new buildable lot. Such transfer must occur between two parcels which meet all the requirements of article II of this chapter without the need for a variance before and after the simple subdivision. The creation or alteration of a private easement shall be considered a simple subdivision.
- B. Application.
 - 1. No less than 14 days before the next City Council meeting, the applicant shall complete an application on the City form.
 - 2. The applicant shall provide a title opinion or registered property abstract as proof of ownership. The City may request the City attorney to determine parties with interest in the properties.
 - 3. The applicant shall provide a survey by a registered land surveyor of the lots or tracts to be subdivided. The survey shall, at the discretion of the Zoning Administrator, show the location of all proposed lot lines, existing lot lines, existing and proposed structures within 50 feet of any lot line, road rights-of-way and any additional information as found necessary.
 - 4. The applicant shall pay a fee, that shall be established from time to time by resolution of the City Council, plus any out-of-pocket costs incurred by the City for review of the application.
- C. Council action. Following review by the City staff, the Zoning Administrator shall cause the application to be placed upon the agenda of the City Council for the next regular meeting. The Zoning Administrator shall transmit to the City Council all the materials related to the application, with a staff recommendation.
- D. No building permit or certificate of occupancy shall be issued for the construction of a structure on lots or tracts in violation of this section.

Sec. 12-1262. Land division.³⁴⁰

- A. In any case where the division of land into two or more lots or parcels for the purpose of transfer of ownership or building improvement is not specifically provided for in the provision of these regulations, a description of such land division shall be filed with the City Administrator. No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel resulting from such division, until such division has been approved by the City Council. Prior to the consideration of such division by the City Council, they shall require that a certified survey be submitted.
- B. In cases where adjoining contiguous property owners wish to exchange or otherwise divide land with the intent of enlarging one of the parcels and as a result of such division neither parcel will be more nonconforming in accordance with the zoning ordinance, article II of this chapter, approval must be obtained from the City Council upon recommendation of the Planning Commission after review of the minor lot subdivision application.
- C. Some of the requirements for minor subdivision approval may be waived. However, the newly acquired land must be combined on the deed for recording purposes as the remainder of the owner's property.
- D. The applicant of a subdivision³⁴¹ containing not more than three lots requiring the construction of a public road thus defined as a major subdivision, may request preliminary and final plat at the same time. The risk of additional costs that may occur due to required changes of a plat already prepared for final plat are borne by the applicant.

Sec. 12-1263. Registered land surveys.³⁴²

³³⁹ Res 1997-16, § 20, 6-17-97

³⁴⁰ Code 1982, § 305.1006; Res 1997-16, § 20, 6-17-97, Ord 14-2004, 10/19/2004

³⁴¹ Ord 02-2009, 4/21/2009

³⁴² Code 1982, § 305.1007

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All registered land surveys shall be filed subject to the same procedure as required for the filing of a plat for platting purposes. The standards and requirements set forth in these regulations shall apply to all registered land surveys.

Sec. 12-1264. Metes and bounds.³⁴³

- A. Conveyance by metes and bounds shall only be permitted upon minor subdivision approval, or for parcels at least 20 acres in area and not less than 500 feet in width.
- B. When a conveyance is made by metes and bounds, no building permit shall be issued until a survey is submitted and the parcel is recorded with the county recorder's office. A survey is not required for parcels in excess of 20 acres.

Sec. 12-1265. Unapproved subdivisions.³⁴⁴

- A. No conveyance of land to which these regulations are applicable shall be filed or recorded, if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961, or to an unapproved plat. The foregoing provision does not apply to a conveyance if the land described:
 - 1. Was a separate parcel of record April 1, 1945, or the date of adoption of subdivision regulations under Laws 1945, chapter 287, whichever is the later, or of the adoption of subdivision regulations pursuant to a home rule charter,
 - 2. Was the subject of a written agreement to convey entered into prior to such time,
 - 3. Was a separate parcel not less than 2 1/2 acres in area and 150 feet in width on January 1, 1966,
 - 4. Was a separate parcel 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 one 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 of 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 or 500 feet in width.
- B. In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the platting authority may waive such compliance.
- C. Any owner or agent of the owner of land who conveys a lot or parcel in violation of the provisions of this article shall pay to the City a penalty (no criminal sanction) of not less than \$100.00 for each lot or parcel so conveyed. The City may enjoin such conveyance or may recover such penalty by a civil action in any court of competent jurisdiction.

Sec. 12-1266. Variances.³⁴⁵

- A. The City Council may grant a variance in any particular case where the subdivider can show that by reason of the unfavorable topography or other physical conditions the strict compliance to these regulations could cause practical difficulties. "Practical difficulties" as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.
 - 1. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
 - 2. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
 - 3. Essential Character: The variance, if granted, will not alter the essential character of the locality.

³⁴³ Code 1982, § 305.1008

³⁴⁴ Code 1982, § 305.1009

³⁴⁵ Code 1982, § 305.1010; Ord 02-2014, 5/20/2014

- B. Economic considerations alone shall not constitute a practical difficulty if reasonable use for the property exists under the terms of this article.
- C. Applications for any such variance shall be made in writing by the subdivider at the time when the plat is filed for consideration. Such application shall state fully all facts relied upon by the subdivider, and shall be supplemented with maps, plans or other additional data which may aid the Planning Commission and the City Council in the analysis of the proposed project. Such variances shall be considered at the next regular meeting held by the Planning Commission. The plans for such development shall include any covenants, restrictions, or other legal provisions necessary to guarantee the full achievement of the proposed plat. Any variance or modifications thus granted shall be recorded and entered in the minutes setting forth the reasons for granting the variance.

Sec. 12-1267. Security interest.³⁴⁶

Creation of a security interest in a portion of a parcel less than the entire parcel does not entitle the property to subdivision even upon foreclosure of the security interest, unless otherwise approved by the City Council and the parcel is in conformance with this article and the zoning ordinance, article II of this chapter.

Sec. 12-1268. Building permits.³⁴⁷

No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on any lot or parcel until all the requirements of this article have been fully met.

Sec. 12-1269. Violation and penalties.³⁴⁸

Any person who violated any of the provisions of this article, or who sells, or offers for sale any lot, block or tract of land herewith regulated before all the requirements of this article have been complied with shall be guilty of a misdemeanor, and upon conviction thereof be subject to fine and/or imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Sec. 12-1270. Park and open space dedication.³⁴⁹

- A. *Purpose.* The City Council recognizes that it is essential to the health, safety, and the welfare of the residents of this City to provide for the preservation of land for parks, playgrounds, public open space, and trails. The City Council also finds that it is appropriate that each subdivision within the City contribute toward the City's parks, playgrounds, open spaces, and trails in proportion to the burden it will place upon the City's park and open space system. Therefore, this park and open space dedication requirement is established to require new developments at the time of subdivision to contribute toward the City's park and open space system in rough proportion to the relative burden they will place upon that system, and:
 - 1. To develop a limited number of major public green spaces which shall retain the natural and scenic features of the land and serve as a wilderness environment for City residents to enjoy; and
 - 2. To create multiple use, non-motorized trails along roads or as a link between various points of interest and public facilities where such trails would enhance the recreational opportunities for residents and provide a safe alternative means of travel within the City; and
 - 3. If future development creates a need for a neighborhood park, land may be acquired for that purpose pursuant to this article.
- B. *Requirements.* Subdividers, as a prerequisite to approval of a subdivision, shall dedicate to the City for park or playground purposes or for public open space or trail systems a reasonable portion of the land being subdivided or in lieu thereof a cash equivalent. The form of dedication, land or cash, (or any combination) shall be decided by the City and dedicated or paid prior to City signing the final plat, or prior to final City Council approval of minor subdivisions.

³⁴⁶ Code 1982, § 305.1011

³⁴⁷ Code 1982, § 305.1100, **Cross reference(s)**—Building permits, inspections and fees, § 12-1804.

³⁴⁸ Code 1982, § 305.1102

³⁴⁹ Ord 47-2004, 8/17/2004

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1. Reasonable portion of land shall be that portion of land which could be purchased with the amount of park dedication fee payment owed by the subject subdivision on a per dwelling unit basis.
 2. Land to be dedicated shall be reasonably adaptable to use for active park and recreation purposes, shall be at a location convenient to the people to be served, and shall be consistent with the general locations as indicated in the official parks map and/or comprehensive parks plan. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, hydrology, tree cover, access and location.
 3. Where a proposed park, playground, recreational area, or open space that has been indicated in the official park map and/or comprehensive park plan is located in whole, or in part, within a proposed subdivision the site must be dedicated to the City. If the subdivider chooses not to dedicate an area in excess of the land required hereunder for such proposed public site, the City shall not be required to act to approve or disapprove the preliminary plat of the subdivision for a period of sixty (60) days after the subdivider meets all the provisions of the Subdivision Ordinance in order to permit the Council to consider the proposed plat and to consider taking steps to acquire, through purchase or condemnation, all or part of the public site proposed under the official park map in the comprehensive parks plan.
 4. Land area conveyed or dedicated hereunder may not be included by a subdivider as an allowance for purposes of calculating the density requirements of the subdivision as set out in the City Zoning Ordinance and shall be in addition to and not in lieu of scenic easement, conservation easements, and open space requirements pursuant to the City Zoning Ordinance.
 5. The City may determine that land not distinguished in its official parks map and/or comprehensive parks plan is needed as a neighborhood park. Should this determination be made, an amendment to the official parks map and/or comprehensive parks plan shall be made identifying the neighborhood park. Should the City determine that land in excess of what can be obtained via Section 12-1270 (B) (1) is required, the remaining area shall be purchased from the applicant by the City via its park and trail fund at a fair market value.
 6. When a cash park dedication fee is paid in lieu of a dedication of land, the subdivider shall pay a per dwelling unit fee as described in Section 12-1270 (C) (3) and (D).
 7. The City shall maintain a separate fund into which all cash park dedication fees received from owners or subdividers in lieu of conveyance or dedication of land for park or playground, public open space or trail purposes shall be deposited and shall make, from time to time, appropriations from such fund for acquisition of land for park and playground purposes, for developing existing park and playground sites, for public open space and trails, or for debt retirement in connection with land previously acquired for parks and playgrounds, which will benefit the residents of the City.
- C. *Administrative Procedure.* When an application for subdivision is submitted, the City Administrator and City Planner shall evaluate its location with that of the official parks map and the comprehensive parks plan to determine whether land is to be recommended for dedication.
1. Should the subject site be located within an area designated for future parkland, open space, or trail corridor, as designated in the official parks map and comprehensive parks plan, the City Administrator and City Planner shall submit the proposed subdivision to the Park Committee for its review and recommendation.
 2. The Park Committee shall make a determination as to what portion or portions of the site may be dedicated to the City for parkland, open space, or trail use as described in the official park map in the City's Comprehensive Park plan. The subdivider shall be made aware of this recommendation which will be forwarded to the Planning Commission for their review and recommendation to the City Council.
 3. Should the subject site be outside of any future proposed parkland, open space, trail or wildlife corridors, or wildlife habitat areas as defined in the official park map and the comprehensive park plan, the City Administrator shall inform the subdivider and the process will continue with the recommendation for a cash park dedication fee in lieu of land dedication in a per dwelling unit amount as defined in Section 12-1270 (D).
 4. Though the subject site may not be located in an area identified for future parkland, open space, trail or wildlife corridor, or wildlife habitat area in the official park map and comprehensive park plan, the Planning Commission may recommend and the City Council may require that a reasonable portion of the land be dedicated to the City, at which time the subdivision will be sent to the Parks Committee for their review and recommendation as to the sites location. Reasonable portion of the land shall be defined as that portion of land in which could be purchased with the amount of park dedication fee payment owed by the subject subdivision per dwelling unit being proposed.

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- D. *Cash Park Dedication Fee.* The cash park dedication fee in lieu of land dedication shall be equivalent to 7.5 percent of the predevelopment value of the land to be subdivided, subject to a minimum fee of \$5,000 per dwelling unit and a maximum fee of \$10,000 per dwelling unit, such fee to be reviewed on an annual basis, with adjustments based on the CPI-U and adopted with the City's fee schedule. The cash park dedication fee shall be calculated based on the impact of new dwelling units and the demand they will place on the City's park system.³⁵⁰
- E. *Payment of cash park dedication fees.* Cash park dedication fees are to be established at the time of preliminary plat approval or in the case of minor subdivisions are to be established and paid prior to final Council approval. The Council may approve payment at a later time under terms agreed upon in the development agreement. Delayed payment may include interest at a rate set by the City.
- F. *Deposit of cash park dedication fees.* Cash park dedication fees shall be deposited by the City directly in the City's restricted Park, Open Space & Natural Resources Fund and shall be used only for purposes authorized by state law. Cash payments may not be used for ongoing "operation or maintenance," in accordance with Minnesota Stat. Sec. 462.35 and 471.1941.³⁵¹
- G. *Land Dedication.* When land is dedicated and deeded to the City for park purposes, it shall be the responsibility of the City to maintain such dedicated property.
- H. *Lot and block number required.* Land dedication to the City shall be in the form of lots with approved lot and block number.
- I. *Right to Challenge.* If the applicant or developer does not believe that the estimates contained in this section fairly and accurately represent the effect of the subdivision on the park or trail system of the City, the applicant or developer may request that the City prepare an in-depth study of the effect of the subdivision on the park and trail system and an estimate of that effect in money and/or land. All costs of such study shall be borne by the developer or applicant. If the developer or applicant request the preparation of such a study, the request must be made at the time the development application is submitted. No application for development that is submitted shall be deemed complete until the requested study has been completed and a determination is made as to the appropriate amount of land or money necessary to offset the effect of the subdivision.

Sec. 12-1271. Conflicting provisions.³⁵²

In the event of conflicting provisions in the text of this article or between this article and other City ordinances, the more restrictive shall apply.

Secs. 12-1272.--12-1325. Reserved.

DIVISION 2. PLATTING PROCEDURE

Sec. 12-1326. Sketch plan.³⁵³

- A. Written consent for subdivision from the legal owner of the property to be subdivided is required before the sketch plan is submitted. In order to ensure that applicants are informed of the procedural requirements and standards of this article, the requirements or limitations imposed by City ordinances and the comprehensive plan, applicants should meet with the planning staff and prepare a sketch plan prior to preparing a preliminary plat. Prospective subdividers shall deposit with the City funds to cover anticipated costs in an amount determined by the City Administrator. The prospective subdivider shall also furnish a list of property owners within 500 feet of the property to be developed.

³⁵⁰ Ord 04-2012, § 12-1270, 10/16/2012

³⁵¹ Ord 13-2005, 9/20/2005

³⁵² Code 1982, § 304.401(04)

³⁵³ Code 1982, § 305.501; Res 1997-16, § 20, 6-17-97, Ord 1997-5, 3-17-98

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- B. The applicant shall provide 25 copies of the sketch plan plus at least one 11 x 17 reduction of same no less than 21 days before the meeting of the Planning Commission at which the sketch plan will be considered. The Administrator shall refer the sketch plan to the following parties for review: the City Attorney; the City Planner; the City Engineer; the MN/DOT District Engineer and/or County Highway Engineer; the Washington Soil and Water Conservation District; the Watershed District or WMO; the natural gas, electric and cable communications utilities; the Fire District and the School District. The sketch plan shall be drawn to scale and contain as a minimum the following information:³⁵⁴
1. Tract boundaries and dimensions.
 2. Significant topographic and physical features.
 3. Proposed general street and lot layout recognizing all applicable ordinance requirements of the City and indicating a minimum of 2 ½ contiguous buildable acres per lot.
 4. General location of proposed public and private open space areas.
 5. General drainage plan, including proposed ponding areas, ditches, and culverts.
 6. Location of proposed septic drainfield and culverts which shall be located on a slope 13 percent or less.
 7. Building pad location.
- C. Upon receipt of the sketch plan, the City Administrator shall refer:
1. The sketch plan for subdivision first to the Natural Resources & Groundwater Commission. Upon review by the Natural Resources & Groundwater Commission, the subdivision sketch plan, with its recommendations, will be sent on to Parks, Recreation & Open Spaces Commission. The Natural Resources & Groundwater Commission shall also send its recommendations to the City Council. The Parks, Recreation & Open Spaces Commission will review the subdivision sketch plan and send its recommendations to the Planning Commission. The Park, Recreation & Open Spaces Commission shall also send its recommendations to the City Council.
 2. Upon receipt of the sketch plan and after review by the Commissions, reviewing authorities and designated consultants, the City Administrator will place the sketch plan upon the agenda of the Planning Commission. The sketch plan will be considered as the basis for discussion between the subdivider and the Planning Commission. Submission of such sketch plan shall not constitute formal filing of a Preliminary Plat. The Planning Commission will, on the basis of such sketch plan, advise the subdivider of the extent to which the proposed subdivision conforms to these regulations and the zoning ordinance and will discuss possible modifications.
- D. Agreement in concept with the sketch plan does not constitute approval of the subdivision. Acceptance of the sketch plan indicates to the subdivider that he may proceed toward fulfilling the necessary steps for approval of the plat in accordance with the provisions of this article.
- E. A sketch plan and preliminary plat are required where land has the potential to be developed in stages.³⁵⁵
- F. The Planning Commission shall hold at least one public hearing, affording an opportunity for all parties interested to be heard, and shall give not less than ten days nor more than 30-day notice of the time and place of such hearing, published in the designated legal newspaper for the City. Such notice shall also contain a description of the land and any requested variances. This notice should specify that any variances identified during the sketch plan process will be considered at the hearing. At least ten days before the hearing, the City Administrator shall mail an identical notice to the owner and to each of the property owners of record for property within 500 feet of the outside boundaries of the land in question.

Sec. 12-1327. Preparing and submitting the preliminary plat.³⁵⁶

- A. When the subdivider feels he is ready to prepare the preliminary plat, he shall have his surveyor and/or planner draw one which is in conformity with the requirements of this article. (See Section 12-1328.)
- B. The subdivider shall fill out an application for consideration of planning request or other applicable forms as may be required and shall pay the fee and make a deposit equal to anticipated expenses to be incurred by the

³⁵⁴ Ord 1997-22, 6/15/99

³⁵⁵ **Cross reference** – Preparing and submitting the final plat. § 12-1330 (B)

³⁵⁶ Code 1982, § 305.502; Res 1997-16, § 20, 6-17-97, Ord 1997-5, 3-17-98

City in review of the preliminary plat. The City Administrator shall place the application of the subdivider on the agenda of all applicable committees and the Planning Commission, and shall set the date for the public hearing.

- C. The subdivider shall furnish the City Administrator with 25 copies of the preliminary plat and one 11 x 17 reduction of the plat; shall furnish the County Surveyor's Office with 7 copies, at least 21 days before the scheduled Planning Commission meeting at which the preliminary plat will be considered.
- D. The subdivider shall furnish copies to the appropriate watershed and water management districts.
- E. If the owner and developer are not the same, the consent of the owner shall be filed and the fee owner shall also sign the application.
- F. Fees for subdivision will be set by the resolution of the City Council from time to time.

Sec. 12-1328. Data required for preliminary plat.³⁵⁷

A. Identification and description:

- 1. Proposed name of subdivision, which name shall not duplicate or be similar in pronunciation to the name of any plat already recorded in the county.
- 2. Legal description of property.
- 3. Name and address of the record owner, any agent having control of the land, including contract purchasers, subdivider, land surveyor, engineer and designer of the plan.
- 4. Map indicating graphic scale not less than one inch to 100 feet.
- 5. North point and vicinity map of area showing well-known geographical points for orientation within a one-half mile radius.
- 6. List of adjoining property owners within 500 feet of the proposed plat.
- 7. Date of preparation.

B. Existing conditions:

- 1. Boundary lines shall be shown clearly and to such a degree of accuracy no major changes are necessary in preparing the plat.
- 2. Existing zoning classifications for land in and abutting the subdivision.
- 3. Approximate total acreage.
- 4. Location, right-of-way width, and names of existing or platted streets or other public ways³⁵⁸, parks and other public lands, permanent buildings and structures, street, drainage and utility easements, section, corporate and school district lines within the plan and to a minimum distance of 500 feet beyond shall also be indicated.
- 5. Location and size of existing sewers, water mains, pipelines, power lines, culverts, wells, septic systems, or other underground facilities within the preliminary plat area and to a distance of 100 feet beyond. Such data as grades and locations of catch basins, manholes, hydrants, and street pavement width and type shall also be shown.
- 6. Boundary lines of adjoining unsubdivided or subdivided land, within 100 feet, identified by name and ownership, but including all contiguous land owned or controlled by the subdivider.
- 7. Topographic data, including contours at vertical intervals of not more than two feet except where the horizontal contour interval is 100 feet or more, a one-foot vertical interval shall be shown. Watercourses, marshes, wooded areas, rock outcrops, and other significant features shall also be shown. The plat shall be superimposed on an aerial map so that it can be clearly indicated how the plat relates to surrounding land. National Geodetic Vertical Datum 1929 Adjustment shall be used for all topographic mapping.
- 8. A copy of all proposed private restrictions shall be submitted.
- 9. In areas where public sewer is not available, four soil borings on each lot defining an area 100 feet by 100 feet suitable for an on-site septic system shall be required. The results shall be submitted to the City Building Official. If it appears soil may not be suitable on any lot for the installation of an on-site system, additional borings and percolation tests will be required.

³⁵⁷ Code 1982, § 305.601; Res 1997-16, § 20, 6-17-97, Ord 1997-5, 3-17-98

³⁵⁸ Ord 02-2009, 4/21/2009

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10. Soil types and location of limits of each soil type as shown in the soil survey of the county.
11. Slopes in excess of 12 percent and slopes in excess of 18 percent shall be delineated.
12. If severe soil limitations for the intended use are noted in the soil handbook on file in the county planning department and the county soil and water conservation district office, a plan or statement indicating the soil conservation practice or practices to be used to overcome said limitation shall be made part of the permit application.
13. On all lakes, ponds, and wetlands, all water surface elevations, natural ordinary high elevation, and present and proposed 100-year flood elevations shall be denoted.
14. The City Administrator and designees shall be permitted to inspect the land during review of the preliminary plat to insure that there are no adverse conditions or harmful conditions upon the land. If any such conditions are found, the City Administrator shall notify the proper authorities and approved remedial action shall be taken as a condition of preliminary plat approval.

C. Design features. Subdivision design features to be shown on preliminary plat.³⁵⁹

1. Layout of proposed streets, showing right-of-way widths and proposed names of streets.
2. Locations and width of proposed alleys, pedestrian ways and utility easements.
3. Lot and block numbers and preliminary dimensions of lots and blocks and area of each lot.
4. Location of house and detached accessory building on each lot. Required front, side, and rear building set back lines. Driveway access shall be indicated on the preliminary plat in the graph that shows the size of each lot, contiguous buildable acres, etc. Where any lot on the plat has the possibility of accessing a driveway on more than one street, the interior street shall be the street on which the driveway access is made, and a covenant shall be recorded on such lots, at the time the plat is filed, restricting driveway access to the interior street.
5. Gradients of proposed street, plans and profiles showing locations and typical cross-sections of street pavement including curbs, gutters, sidewalks, drainage easements, servitude right-of-ways, manholes and catch basins.
6. Areas, other than street, alleys, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of each area in acres.
7. Grading and drainage plan for entire subdivision. Details must include proposed ponding areas, ditches, culverts or storm sewer. Drainage calculations are also required. Arrows indicating the direction of the drainage shall be provided. If any fill or excavation is proposed in a wetland or lake, approval must be obtained from the State Department of Natural Resources and U.S. Army Corps of Engineers.
8. Erosion and sediment control plan.
9. Location of soil tests showing that two septic systems may be installed on each lot in compliance with City specifications on slopes of 13 percent or less.
10. Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the subdivider shall submit a sketch plan of the remainder of the property showing the possible relationships between the proposed subdivision and future subdivision. In any event, all subdivisions must be shown to relate well with existing or potential adjacent subdivisions and land use.
11. Surface water drainage patterns and courses on the subdivided property together with a statement or plan indicating the effect on such patterns and courses that would result from the subdivision and development of such property and the soil conservation practices and drainage control devices to be used to overcome or prevent any drainage problems resulting to the subject property or adjacent property from such subdivision.
12. Such other information as may be requested by the City Engineer, City planning staff, City Planning Commission, or City Council.

Sec. 12-1329. Review of the preliminary plat.³⁶⁰

- A. The applicant shall provide 25 copies of the plat plus at least one 11 X 17 reduction of same no less than 21 days before the meeting of the Planning Commission at which the plat will be considered. The City Administrator shall refer the plat to the following parties for review: the City Attorney; the City Planner; the City Engineer; the MN/DOT District Engineer and/or County Highway Engineer; the Washington Soil and Water Conservation District; the Watershed District or WMO; the natural gas, electric and cable communications utilities; the Fire District and the School District.

³⁵⁹ Cross reference -- Minimum design standards, § 12-1376 et seq.

³⁶⁰ Code 1982, § 305.503; Res 1997-16, § 20, 6-17-97, Ord 1997-5, 3-17-98, Ord 1997-13, 9/22/98

- B. Any plat proposed in a shoreland district or St. Croix River Bluffland and Shoreland Management District must have approval of the Minnesota Department of Natural Resources. If a watershed district exists in the area of the proposed platted property, approval must be obtained from the watershed district.
- C. A preliminary plat of all of a potential subdivision shall be required even though that subdivision is to be developed in stages.
- D. The reviewing authorities, staff and consultants shall, within **14 days** of receipt of the Preliminary Plat, submit reports to the City Administrator expressing their recommendation for approval, disapproval or revisions. If no report is received within 14 days, it will be assumed by the Planning Commission that there are no objections to the plat as submitted.
- E. Within 30 days after the preliminary plat and all other required information are filed with the City and application fees and deposits are paid to the City, the Planning Commission shall hold a public hearing on the subdivision and the City Council shall act on the application. Notice of the purpose, time and place of such a public hearing shall be published in the official newspaper at least ten days prior to the day of the hearing. Property owners within 500 feet of the subdivision shall be notified of the public hearing.
- F. The Planning Commission may recommend, and the City Council may require modifications, changes and revisions of the preliminary plat as it deems necessary to protect the health, safety, morals, comfort, convenience and general welfare of the City.
- G. The report of the Planning Commission shall be submitted to the Council not later than 7 days after the public hearing on the plan. If the Planning Commission fails to make a report, the Council shall proceed without such report. Failure to receive a report from the Planning Commission as herein provided shall not invalidate the proceedings or actions of the Council.
- H. If the preliminary plat is not approved by the City Council, the reasons for such action shall be recorded in the proceedings and transmitted to the applicant. A subdivision preliminary plat request application shall be preliminarily approved or disapproved within 60 days following delivery of an application completed in compliance with this article by the applicant to the City, unless an extension of the review period has been agreed to by the applicant.
- I. Should the subdivider desire to amend the plat after preliminary approval but before final approval he may submit an amended plat which shall follow the same procedure as a new plat, except for the public hearing and fee unless the amendment is, in the opinion of the City Council, of such scope as to constitute a new plat. If so, the plat shall be refiled.

Sec. 12-1330. Preparing and submitting the final plat.³⁶¹

- A. After the approval of the preliminary plat, the final plat may be prepared. The final plat shall incorporate any changes, modifications and/or revisions required by the City Council.
- B. In the case of a subdivision to be developed in stages, the subdivider may be granted permission to prepare a final plat for only the portion of the approved plat which he proposes to develop at this time, provided such portion conforms with all the requirements of the City. The subdivider may be required, as a condition of approval, to submit an estimated time schedule for further staging of the platting and recording.
- C. All plats shall comply with the provisions of state statutes, the standard procedures for platting in the county, and the requirements of this regulation.
- D. The subdivider shall submit the five copies of the final plat to the City Clerk and county surveyor's office not later than 12 months after the date of approval of the preliminary plat. The approval of the preliminary plat will be considered void unless an extension is requested in writing by the subdivider and granted by the City Council.

³⁶¹ Code 1982, § 305.504

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- E. The subdivider shall submit, with the final plat, an opinion of title by the subdivider's attorney.

Sec. 12-1331. Data required for final plat.³⁶²

The final plat shall be prepared by a land surveyor who is registered in the state and shall comply with the provisions of state statutes, this article and the manual of standard procedures for platting in the county.

Sec. 12-1332. Review of the final plat.³⁶³

- A. After obtaining approval of the preliminary plat, the subdivider shall submit ten copies of the final plat along with plat checking fee to the county surveyor for review by the county surveyor.
- B. Prior to approval of the final plat by the City Council, the subdivider must have installed all required improvements or executed an agreement with the City for their installation and posted financial guarantees as required in Section 12-1471. Required improvements shall conform to approved engineering standards and be in compliance with these regulations and all other applicable city ordinances.
- C. Upon a request for final approval, the City Council shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and upon which preliminary approval is expressly conditional either through performance or the execution of appropriate agreements assuring performance. If the final plat is not approved, the reasons for such action shall be recorded in the official proceedings and transmitted to the subdivider.
- D. The final plat must be approved by the county surveyor in accordance with the standard procedures for platting in the county.
- E. Upon receiving final plat approval by the City Council, the subdivider shall then record it with the county recorder within 120 days or the approved plat shall be considered void.
- F. Upon receiving approval of the final plat for a portion of the approved plat, the subdivider shall not be required to request a continuation of the recognition of the plat so as to avoid automatic expiration of preliminary approval unless final plat approval is not obtained within 24 months following preliminary approval.

Secs. 12-1333–12-1375. Reserved.

DIVISION 3. MINIMUM DESIGN STANDARDS

Sec. 12-1376. Conformity with comprehensive development plan.³⁶⁴

The proposed subdivision shall conform to the comprehensive development plan and policies as adopted by the City.

Sec. 12-1377. Land requirements.³⁶⁵

- A. Land shall be suited to the purpose for which it is to be subdivided. No plan shall be approved if the site is not suitable for purposes of the kind proposed by reason of potential flooding, topography, or adverse earth or rock formations.
- B. Land which poses hazards to life, health or property shall not be subdivided for residential purposes until all such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision plan.

³⁶² Code 1982, § 305.602

³⁶³ Code 1982, § 305.505

³⁶⁴ Code 1982, § 305.701

³⁶⁵ Code 1982, § 305.702

- C. Erosion and sedimentation control plans in accordance with the technical standards and specifications of the soil conservation service as provided by the county soil and water conservation district office, shall be required on slopes with grades of 12 percent or steeper.
- D. Proposed subdivision shall be coordinated with existing nearby municipalities or neighborhoods so that the community as a whole may develop harmoniously.

Sec. 12-1378. Street plan.³⁶⁶

- A. Proposed streets shall conform to the state road and county highway plans or preliminary plans as have been prepared, adopted and/or filed as prescribed by law. All streets within a subdivision shall be dedicated to the City and built to city standards.
- B. Streets shall be logically related to the topography in order to produce usable lots and reasonable grades.
- C. Access shall be given to all lots and portions of the tract in the subdivision, and to adjacent unsubdivided parcels unless the topography clearly indicates that such connection is not feasible. Access shall be defined as practical access. Reserved strips, and land-locked areas shall not be created.
- D. The arrangement of streets in new subdivisions shall make provisions for the appropriate continuation of the existing streets in adjoining areas.
- E. Where adjoining areas are not subdivided, but may be subdivided, the arrangement of streets in a new subdivision shall make provision for the proper projection of streets into adjoining areas by extending the new streets to the boundaries of the subdivision at appropriate locations. Streets must be constructed to the boundary according to city specifications or it shall be documented that it is feasible to build them to the boundary. Dedication of road right-of-way shall be required to the boundary even though the street is not constructed. It shall be the responsibility of the adjoining property owner, when his land is subdivided, to build the road to city standards.
- F. Where the City does not have an adequate dedicated right-of-way for an existing road adjacent to the proposed subdivision, the developer shall dedicate the required right-of-way to the City for street and utility purposes.
- G. Minor streets shall be laid out to discourage their use by through traffic. Thoroughfares shall be reserved for through traffic by providing marginal access streets, interior streets for serving lots, or other means.
- H. Half or partial streets will not be permitted, except where essential to reasonable subdivision of a tract in conformance with the other requirements and standards of these regulations and where, in addition, satisfactory assurance for dedication of the remaining part of the street can be secured.
- I. Wherever a tract to be subdivided adjoins an existing half, or partial street, the part of the street within such tract shall be platted to provide the necessary road right-of-way.
- J. Dead-end streets shall be prohibited, except as stubs to permit future street extension into adjoining tracts, or when designed as cul-de-sac streets. A temporary turn-around or cul-de-sac shall be required by the City if a road will be a dead end until an adjoining tract is developed.
- K. Where a subdivision abuts or contains an existing or planned major thoroughfare or a railroad right-of-way, a street approximately parallel to land on each side of such thoroughfare and right-of-way may be required for adequate protection of residential properties and separation of through and local traffic. Such service streets shall be located at a distance from the major thoroughfare or railroad right-of-way suitable for the appropriate use of the intervening land, as for park purposes in residential districts, or for commercial and industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

³⁶⁶ Code 1982, § 305.703, **Cross reference(s)**--Streets and sidewalks, Ch. 20.

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- L. 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.

Sec. 12-1379. Cul-de-sac streets.³⁶⁷

- A. The City Council may permit cul-de-sac streets, after Planning Commission review, by reason of unfavorable land forms or the irregular shape of the land from which the subdivision is being made and a normal street pattern cannot be established. The City Council may also permit cul-de-sac streets to minimize the impacts of the subdivision or proposed street on existing neighborhoods. These impacts may include increased traffic volume or speed, privacy or security of existing neighborhoods and preservation of natural resources or features.
- B. A cul-de-sac street shall not exceed 1,320 feet in length and shall serve no more than nine lots. Every lot platted on a cul-de-sac street shall have frontage and access on the cul-de-sac street and shall be included in the nine lot limit. A variance may be granted on the length limitation only when it is clearly demonstrated that the length greater than 1,320 feet is necessary for reasons of unfavorable land topography. No variance shall be granted which would allow more than nine lots to be created on a cul-de-sac street.
- C. When future development of adjacent parcels will allow for extension of a temporary cul-de-sac street or conversion thereof to a through street, the City Council may require that right-of-way shall be dedicated to the plat boundary. No outlots shall be created.

Sec. 12-1380. Street design.³⁶⁸

- A. *Minimum widths.* Minimum right-of-way widths and pavement widths (face-to-face of curb) for each type of public street or road shall be as follows:

<i>Type of Street</i>	<i>Right-of-Way Width</i>	<i>Roadway Width Including Shoulders</i>
Minor arterial	120 feet minimum	As determined by traffic needs
Collector/commercial	80 feet minimum	44 feet
Industrial	80 feet minimum	44 feet
Local street (Urban)	60 feet minimum	32 feet, measured from face of curb to face of curb
Local street (Rural)	60 feet minimum	24 foot wide paved surface with a four-foot wide aggregate shoulder
Cul-de-sac	60 feet minimum turnaround radius	45 feet turnaround radius

The determination of the type of street necessary to serve a development shall be made by the City Council. The type of road to be constructed, whether it be rural or urban, shall be based on the existing and proposed topography, impact on adjoining properties, drainage consideration, environmental concerns, traffic projections and other aspects of the development. It is the City's intent to provide a roadway that both meets sound engineering principles and is consistent with the nature of the development to be served. Review by the Planning Commission and City Council will include findings of fact which detail the special considerations given to a particular development.

- B. *Dedication of additional width.* Where a subdivision abuts or contains an existing street of inadequate width, sufficient additional width shall be dedicated to meet the above standards.
- C. *Special conditions.* Additional right-of-way and roadway widths may be required to promote public safety and convenience when special conditions require it or to provide parking space in areas of intensive use.

³⁶⁷ Code 1982, § 305.704; Res 1997-3, 1-14-97; Res 1997-16, § 20, 6-17-97; **Cross reference(s)**--Streets and sidewalks, Ch. 20.

³⁶⁸ Code 1982, § 305.705, **Cross reference(s)**--Streets and sidewalks, Ch. 20.

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- D. *Restriction of access.* Access of local streets onto state, county state aid highways, and county highways shall be discouraged at intervals of less than 500 feet.
- E. *Street jog.* Street jogs with centerline offsets of less than 150 feet shall not be allowed.
- F. *Deflection.* 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 centerline radius of not less than 200 feet.
- G. *Grades.* Centerline gradients shall be at least 0.5 percent and grades shall not exceed eight percent.
- H. *Vertical curves.* The state department of transportation road design manual, section 2-45.07, shall govern vertical curves. The minimum length of a vertical curve shall be 100 feet.
- I. *Angle of intersection.* The angle formed by any intersection of streets shall be 90 degrees unless a different angle is approved by the City Engineer. In no case shall the angle be less than 75 degrees.
- J. *Size of intersection.* Intersections of more than four corners shall be prohibited.
- K. *Corner radii.* Roadways of street intersections shall be rounded by a radius of not less than 25 feet. Roadways on alley-street intersections shall be rounded by a radius of not less than six feet. Corners at the entrances of the turnaround portions of the cul-de-sacs shall be rounded by a radius of not less than 15 feet.
- L. *Curb and gutter.* Curb and gutter may be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways for urban design.
- M. *Elevation of new streets.* All new streets located in the floodplain shall be elevated to no lower than the regulatory flood protection elevation.

Sec. 12-1381. Private streets.³⁶⁹

Private streets are not permitted. See Section 12-1378(A) and Section 12-1256.

Sec. 12-1382. Alley design.³⁷⁰

- A. 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-family use shall not be permitted.
- B. All alley rights-of-way and pavement widths shall conform to the following minimum standards:

<i>Classification</i>	<i>Right-of-way Width</i>	<i>Pavement</i>
Industrial or commercial	24 feet	20 feet
Residential (two-way)	20 feet	20 feet
Residential (one-way)	20 feet	6 feet

- C. All centerline gradients shall be at least 0.5 percent and shall not exceed eight percent.

Sec. 12-1383. Drainage.³⁷¹

- A. A complete and adequate drainage system design shall be required for the subdivision and may include a storm sewer system or a system of open ditches, culverts, pipes and catch basins, and ponding areas, or both systems and submitted to the City Engineer and the soil conservation for approval.

³⁶⁹ Code 1982, § 305.706, **Cross reference(s)**--Streets and sidewalks, Ch. 20.

³⁷⁰ Code 1982, § 305.707

³⁷¹ Code 1982, § 305.710

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- B. The annual probability of increased rate of surface runoff due to new construction shall not exceed one percent.
1. Annual probability shall not exceed one percent means that a 100-year storm of appropriate duration should be used for design but that storms of lesser magnitude (e.g., two-year or ten-year storms) should be examined as well.
 2. Surface runoff is the water leaving the property on or very near the surface (e.g., including the gravel subgrade of a parking lot).
 3. Surface runoff rate is the peak discharge as calculated by the S.C.S. T R 20 for a storm of critical duration.

Sec. 12-1384. Easements.³⁷²

- A. *Provided for utilities.* Easements of at least 20 feet wide, centered on rear and other lot lines as required, shall be provided for utilities where necessary as recommended by the City Engineer. Where underground utilities are being installed, a ten-foot wide front or side yard easement may be required.
- B. *Provided for drainage.* Easements shall be provided along each side of the centerline of any watercourse or drainage channel, whether or not shown on the comprehensive plan, to a sufficient width to provide proper maintenance and protection and to provide for stormwater runoff and installation and maintenance of storm sewers.
- C. *Dedication.* Utility and drainage easements shall be dedicated for the required use.
- D. *Trails.* Trail easements shall be provided as required by the City Council in compliance with the comprehensive plan.
- E. *Scenic easements.* Scenic easements shall be required on slopes of 18 percent and greater, wetlands, drainageways, and other lands and soils judged to be fragile by the soil conservation service. Scenic easements also shall be required on slopes greater than 12 percent if the land is unbuildable or heavily wooded and would be affected adversely by development. Such easements shall be required as a condition of subdivision approval, and shall prohibit the following activities: Dumping, burning, grading, grazing of domesticated farm animals, vegetative cutting in excess of prudent forestry practices as approved by the Forestry Division of the Minnesota Department of Natural Resources, motorized vehicles, construction of any structure including driveways. Such scenic easements shall be recorded against the affected lots in the subdivision.
1. The City shall have the right to reasonable access to easement areas to verify compliance with the restrictions, and to cross adjacent lands in common ownership with the easement area to obtain such access.
 2. A scenic easement prohibits the owner from engaging in harmful activities in the area subject to the easement, but does not grant the general public any right of access to the land.

Sec. 12-1385. Street names.³⁷³

Names of new streets shall not duplicate existing or platted street names unless a new street is a continuation of or in alignment with the existing or platted street, if it shall bear the same name of the existing or platted street so in alignment. Street names shall conform to the county uniform street naming and property numbering system as applicable.

Sec. 12-1386. Block design.³⁷⁴

- A. Block length and width or acreage within bounding streets shall be such as to accommodate the size of residential lots required in the area by the zoning ordinance, article II of this chapter, and to provide for convenient access, circulation control, and safety of street traffic.

³⁷² Code 1982, § 305.711; Res 1997-16, § 20, 6-17-97, Ord 1997-13, 9-22-98

³⁷³ Code 1982, § 305.713, **Cross reference** – Streets and sidewalks, Ch. 20.

³⁷⁴ Code 1982, § 305.714

- B. In residential areas, other than water frontage, blocks shall not be less than 600 feet nor more than 1,800 feet in length measured along the greatest dimension of the enclosed block areas, unless minor variances are necessitated by topography or conformance with an adjoining plat.
- C. In blocks over 900 feet long, ten foot wide pedestrian crosswalks may be required through the blocks in locations deemed necessary to public health, convenience and necessity. Suitable paving and fencing shall be provided.
- D. Blocks for commercial and industrial areas may vary from the elements of design contained in this section if the nature of the use requires other treatment. In such cases, off-street parking for employees and customers shall be provided along with safe and convenient limited access to the street system. Space for off-street loading shall also be provided with similar access. Extension of roads, railroad access right-of-way, and utilities shall be provided as necessary.
- E. Blocks shall be wide enough to allow two tiers of lots with a minimum depth as required by zoning ordinance, article II of this chapter, except adjoining a lake, stream, railroad or thoroughfare or where one tier of lots is necessary because of topographic conditions.

Sec. 12-1387. Lot requirements.³⁷⁵

- A. Side lot lines shall be substantially at right angles to straight street lines or radial to curved street lines or radial to lake or stream shores unless topographic conditions necessitate a different arrangement.
- B. Each lot shall front upon an improved public street.
- C. No lot shall have less area or width than is required by zoning regulations.
- D. Lots designed for commercial or industrial purposes shall provide adequate off-the-street service, loading and parking facilities.
- E. Double frontage lots shall not be permitted.
- F. Lots abutting upon a watercourse, drainageway, channel or stream shall have an additional depth or width, as required to assure building sites that are not subject to flooding.
- G. Lots with lakeshore frontage shall be designed so that the lot lines extended shall maintain the closest approximation to riparian right.
- H. In the subdividing of any land, regard shall be shown for all natural features, such as tree growth, watercourses, historic spots, or similar conditions, which if preserved will add attractiveness and stability to the proposed development.
- I. All remnants of lots below minimum size remaining after subdividing of a larger tract must be added to adjacent lots.
- J. Where a proposed plat is adjacent to a major or minor arterial there shall be no direct vehicular access from individual lots to such streets and roads. In the platting of small tracts of land fronting on limited access highways or thoroughfares where there is no other alternative, a temporary entrance may be granted; as neighboring land becomes subdivided and more preferable access arrangements become possible, such temporary access permits shall become void. At the time such temporary access is granted, a development agreement shall be recorded against the lot or lots requiring the owner to bear the expense of relocating access in the event it becomes necessary. Driveway access collector streets must be a minimum of 300 feet apart and meet appropriate safety standards.
- K. No lot shall extend over a political subdivision boundary. No building shall extend over a school district line.

³⁷⁵ Code 1982, § 305.715

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- L. In any area where lots are platted in excess of ten acres, a preliminary subdivision plan may be required showing a potential and feasible way in which the lot or lots may be resubdivided in future years for more intensive use of the land. The placement of buildings or structures upon such lots shall allow for potential resubdivision.
- M. Lot width on cul-de-sac lots shall be no less than 300 feet at the building setback line.

Secs. 12-1388--12-1425. Reserved.

DIVISION 4. ENGINEERING STANDARDS³⁷⁶

Sec. 12-1426. Streets.³⁷⁷

- A. *Street grading.* Streets shall be graded in accordance with a plan approved by the City Engineer. In the case of an urban street design the grading shall include the entire width of the right-of-way and shall provide a boulevard section, in addition to the minimum pavement width. The boulevard sections for urban roadways shall be graded to maintain the integrity of the abutting topography. The City Engineer shall review each plan with the developer to determine the best possible alternative for grading the boulevards. This may include construction of retaining walls or other construction to stabilize roadside banks and maintain existing trees or environmental aspects of a development. As recommended by the City Engineer, and approved by the City Council, the grades within the boulevard section for an urban roadway shall be two percent in the first four feet behind the curb. From this area, the boulevard grades shall match the existing topography at a grade not to exceed three percent.
- B. *Street pavement.* The design of street pavement for all streets covered by this regulation shall be in accordance with the state highway department road design Manual No. 5-291 for flexible pavements. The designed thickness of the surfacing elements shall be in accordance with the flexible pavement design standard for road classifications as shown below. However, a minimum of six inches of class 5 aggregate base and three inches of bituminous surfacing is required. This bituminous surfacing shall consist of 1-1/2 inches of bituminous base course and 1-1/2 inches of bituminous wear course. More stringent design may be required by the City Engineer based on soil borings provided by the developer. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed. Immediately prior to the placement of the bituminous wear course, any roadway settlements or other pavement damage shall be repaired by the developer.
- C. *Street design.*

<i>Street Classification</i>	<i>Pavement Design: Axle Load</i>
Arterials, Collector Street needs	As determined by traffic
Local Streets	7 ton minimum

- D. *Soil tests.* To determine subgrade soil classifications, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Reports of the soil analysis shall be submitted to the engineer with the pavement plans. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.
- E. *Curb and gutter.* Concrete curb and gutter will be constructed on both sides of urban design streets. Where required, the construction of concrete curb and gutter shall be in accordance with state department of transportation 2531 and shall be either barrier or surmountable type curb as directed by the City Council. Bituminous curbs will not be allowed.
- F. *Boulevards.* All boulevards shall have four inches of top soil (black dirt) placed on them and then be seeded or sodded.

³⁷⁶ **Cross reference**—Streets and sidewalks, Ch. 20.

³⁷⁷ Code 1982, § 305.801, Ord 2004-5, 6/15/04

- G. *Sidewalks and pedestrian ways.* All required walks shall be concrete four inches thick placed on a four-inch gravel base. Grades shall be approved by the City Engineer. Sidewalks shall be placed in the public right-of-way.
- H. *Aggregate shoulders.* The aggregate shoulders constructed on rural design roadways shall consist of a four-foot wide section consisting of two inches of class 2 aggregate.

Sec. 12-1427. Utilities.³⁷⁸

- A. All utilities shall be installed by the subdivider to each lot in the subdivision.
- B. All utilities shall be placed underground. All groundwork shall be completed prior to street surfacing.

Sec. 12-1428. Sanitation, sewer and water rural areas.³⁷⁹

Where lots cannot be connected with a public sewerage system, provision must be made for sanitary sewerage facilities, consisting of an individual disposal device for each lot in accordance with the City sanitary sewer ordinance, Article IX of this chapter. This does not mean that the installation of individual disposal devices shall be at the expense of the subdivider.

- A. Any subdivision or lot not provided with off-site sewer facilities shall be subject to soil and percolation tests to determine whether the lot size proposed will meet minimum standards of health and sanitation due to limitations of soils as shown on existing soils maps. The lot area and topography must be such that it will accommodate two adequate disposal systems to serve the residence for the estimated unsewered years, as determined by the City Council. Such test shall be made at the expense of the subdivider, and a sketch map shall be submitted to identify the specific locations where tests were made.
- B. Four soil borings showing an area of 10,000 square feet suitable for an on-site septic system shall be required for each proposed lot by a certified soil tester. Additional testing may be required for each proposed lot by a certified soil tester. Additional testing may be required if serious limitations for the installation of an on-site system are found.
- C. All on-site sewage disposal systems shall comply with the standards of the City sanitary sewer ordinance, Article IX of this chapter, the state department of health, and the state pollution control agency.

Sec. 12-1429. Stormwater drainage.³⁸⁰

A drainage system design shall be required, and may include a storm sewer system or a system of open ditches, culverts, pipes, catch basins and ponding areas, or both systems. Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; drainage way easements or land dedication may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purposes. If there is a watershed district, that board must approve all surface water drainage. The City Engineer shall review and approve the stormwater drainage system and all runoff calculations for any street improvement project.

Sec. 12-1430. Street signs.³⁸¹

All street signs shall be provided and installed by the City at the expense of the subdivider.

Sec. 12-1431. Inspection.³⁸²

All required improvements shall be inspected by the City Engineer during construction at the expense of the subdivider.

³⁷⁸ Code 1982, § 305.802, **Cross reference(s)**--Utilities, Ch. 24.

³⁷⁹ Code 1982, § 305.803, **Cross reference(s)**--Sewage, § 12-1951 et seq.

³⁸⁰ Code 1982, § 305.805

³⁸¹ Code 1982, § 305.806, **Cross reference(s)**--Signs generally, § 12-210.

³⁸² Code 1982, § 305.808

Secs. 12-1432--12-1470. Reserved.

DIVISION 5. IMPROVEMENTS

Sec. 12-1471. Required.³⁸³

Prior to final approval of a plat by the City Council, the subdivider shall have agreed, in the manner set forth below, to install at the subdivider's expense and in conformity with all applicable standards and ordinances, the following improvements on site:

- A. *Survey monuments.* All subdivision boundary corners, block and lot corners, road intersection corners and points of tangency and curvature shall be marked with survey monuments or triangulation stations in or adjacent to the property and shall be preserved in precise position unless a relocation is approved by the controlling agency. Delayed setting of monuments shall not be permitted.
- B. *Grading.* The full width of the right-of-way of each street and alley dedicated in the plat shall be graded for an urban design roadway. All graded rights-of-way, not including the street surface, and all graded or disturbed areas within a subdivision shall be seeded and stabilized in compliance with the recommendations of the county soil conservation district and the City Engineer within 30 days of the completion of grading or disturbance of individual areas.
- C. *Pavement.* All street and alleys shall be improved with concrete or bituminous surface.
- D. *Curb and gutter.* Along both sides of an urban design street, concrete curb and gutter shall be installed.
- E. *Drainage facilities.* Such facilities and easements shall be installed as will adequately provide for the drainage of surface waters; a storm sewer system may be required when such easements or land is needed in the public interest for purposes of floodplain management, proper drainage, prevention of erosion, pedestrian access to water bodies, or other public purpose. If there is a watershed district, that board must approve all surface water drainage. If SCS structures exist on the land to be subdivided or will be required, SCS must approve the plan for structures and restoration.
- F. *Miscellaneous facilities.* Tree planting, traffic control signs, oversized utility trunk lines, pedestrian ways, and other improvements may be required.
- G. *Erosion control.* Prior to the commencement of any grading or disturbance of any area within a subdivision, silt fences or other erosion control devices required and approved by the City Engineer shall be installed on site. Such devices shall include but not be limited to: staging, grading operations, side slopes, silt fences, mulching, culverts, ponding areas, netting, etc. Such erosion control devices shall remain in place and shall be maintained in working order until the disturbed areas are stabilized and roadways are approved, at which time they shall be removed at the expense of the developer.

Sec. 12-1472. Payment for installation.³⁸⁴

- A. The required improvements as listed elsewhere are to be furnished and installed at the sole expense of the subdivider.
- B. If the platting and development of the subject property shall necessitate the construction and improvement of public roads outside of the subdivided property, the City may require the owner to provide sufficient financial guarantees for the portion of the estimated cost of such construction or improvement as represents the benefit to the subdivided property using usual assessment apportionment practices.

³⁸³ Code 1982, § 305.901

³⁸⁴ Code 1982, § 305.902

Sec. 12-1473. Agreement providing for the installation.³⁸⁵

- A. Prior to the installation of any required improvements and prior to approval of the final plat, the subdivider shall enter into a contract in writing with the City requiring the subdivider to have such improvements constructed by the subdivider in accordance with the plans and specifications prepared by the City Engineer, which plans shall be in conformance with all applicable standards and ordinances. Such contract shall provide for the observation of construction by the City Engineer to ensure conformance to the plans and specifications, and shall require that the City be reimbursed for all costs incurred by the City for planning, engineering, and legal fees, and other expenses in connections with making such improvements; and shall contain such other provisions as may be required by the City Council.
1. The subdivider shall, concurrently with the execution of the contract, make a cash escrow deposit, or in lieu thereof, provide an irrevocable letter of credit, the amount of which shall be equal to 150 percent of the City Engineer's estimate of the total cost of the improvements to be furnished under the contract, including the costs for legal, administrative, and engineering expenses, including inspection. The City shall be entitled to reimburse itself out of such cash deposit or irrevocable letter of credit for all expenses incurred by the City for the completion of the work, and upon completion of the work, any balance remaining in said deposit shall be refunded to the subdivider. The subdivider shall also agree to reimburse the City for any costs and expenses incurred in excess of the original cash deposit or irrevocable letter of credit, and shall replenish the deposit or letter of credit as necessary and requested by the City to secure the subdivider's obligations to the City.
 2. On request of the subdivider, the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat. In such event, the amount of the deposit or letter of credit may be reduced in a sum equal to one-half of the estimated cost of covered improvements completed prior to acceptance of the plat. The time for completion of the work and the several parts thereof shall be determined by the City Council upon recommendation of the City Engineer. It shall be reasonable with relation to the work to be done, the seasons of the year, and proper correlations with construction activities in the plat and subdivision.
- B. No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he has previously defaulted on work or commitments.

Sec. 12-1474. Financial guarantee.³⁸⁶

The financial guarantee required as part of the division agreement shall be one of the following:

- A. *Escrow deposit.* A cash escrow deposit may be made with the City Administrator. The City shall be entitled to reimburse itself out of such deposit for any cost or expense incurred by the City for completion of the work in case of default of the breach thereof.
- B. *Letter of credit.* The subdivider may deposit with the City, from a bank or other reputable institution or individual subject to the approval of the City Council, an irrevocable letter of credit which shall certify that:
1. The creditor does guarantee funds in the required amount.
 2. In the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
 3. This letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.

Sec. 12-1475. Construction plans and inspections.³⁸⁷

- A. Construction plans for the required improvements conforming in all respects with the standards and ordinances of the City shall be prepared at the subdivider's expense by the City Engineer. Such plans shall

³⁸⁵ Code 1982, § 305.903

³⁸⁶ Code 1982, § 305.904; Res. No. 1997-16, § 20, 6-17-97

³⁸⁷ Code 1982, § 305.905

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become part of the required contract. Two prints of the plans shall be furnished to the City to be filed as a public record.

- B. All required improvements on the site that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the City Engineer at the subdivider's expense. Any tests necessary to determine conformance to all city specifications and requirements and the plans shall be prescribed and scheduled by the City Engineer and performed at the subdivider's expense. Acceptance by the City of the improvements and release of the subdivider's security shall occur one year after the City Engineer has certified completion of the project and compliance with the contract.
- C. The subdivider shall obtain at his own expense, an "as built" plan which shall be submitted to the City upon completion of improvements and before such improvements are accepted by the City. The City Engineer shall certify to the City that the improvements were constructed as specified in the plans, and that the improvements were constructed according to all applicable standards and ordinances.

Sec. 12-1476. Completion prior to approval of plat.³⁸⁸

Improvements within a subdivision which have been completed prior to application for approval of the plat or execution of the contract for installation of the required improvements shall be accepted as equivalent improvements in compliance with the requirements only if the City Engineer shall certify that he is satisfied that the existing improvements conform to applicable standards.

Secs. 12-1477--12-1479. Reserved.³⁸⁹

DIVISION 6. PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS³⁹⁰

Sec. 12-1480. Covenants required.

Protective development covenants shall be required of all Major Subdivisions within the corporate boundaries of the City of Afton.

Sec. 12-1481. Covenant regulations.

All protective covenants shall contain regulations for the compliance of all aspects of Chapter 25, Article I. Furthermore, private penalties shall be established and enforced for any property owner unable to comply with any aspect of Chapter 25, Article I, Section 25-1 to 25-7.

Secs. 12-1481 – 12-1495. Reserved.

DIVISION 7. REQUIREMENTS FOR THE LOWER ST. CROIX RIVER SHORELAND MANAGEMENT³⁹¹

Sec. 12-1496. Land suitability.

No land shall be subdivided which is found by the Council to be unsuitable for reason of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewer disposal capabilities or any other feature likely to be harmful to the health, safety, or welfare of the future residents of the proposed subdivision or the community. The Council in applying the provisions of this section shall in writing cite the particular features upon which it bases its conclusions that the land is not suitable for the proposed use and afford the subdivider an opportunity to present evidence regarding such suitability at a public hearing. Thereafter the Council may affirm, modify, or withdraw its determination of unsuitability.

³⁸⁸ Code 1982, § 305.906

³⁸⁹ Ord 10-2005, 6/21/2005

³⁹⁰ Ord 10-2005, 6/21/2005

³⁹¹ **Cross reference**—Lower St. Croix River bluffland and shoreland management, § 12-576 et seq.

Sec. 12-1497. Planned cluster developments.

A pattern of subdivision development which places dwelling units into compact groupings may be allowed when the proposed clustering provides a better means of preserving agricultural land, open space, woods, scenic views, wetlands, and other features of the natural environment than traditional subdivision development. Except for minimum setbacks and height limits, altered dimensional standards may be allowed as exceptions to this article for planned cluster developments, provided:

- A. In rural districts of this article the number of dwelling units allowed shall not exceed the total number of dwelling units allowed if the development was based on the minimum lot size requirements for a single-family residential subdivision.
- B. In urban districts of this article and only where public sewer and water will be installed in the proposed cluster development, the number of dwelling units shall not exceed 50 percent more than the total number of dwelling units allowed if the development was based on the minimum lot size requirements for single-family residential subdivision.
- C. Open space shall be preserved. At least 50 percent of the length of shoreland or bluffland frontage as viewed from the river shall be kept in its natural state.
- D. Temporary docks, if allowed, shall be centralized and of a size not to exceed the needs of the residents of the development.

Secs. 12-1498--12-1525. Reserved.

ARTICLE VII. HERITAGE PRESERVATION³⁹²

DIVISION 1. GENERALLY

Sec. 12-1526. Public policy and purpose.³⁹³

The City Council hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures and other objects having special historical interest or value is a public necessity, and is required in the interest of the health, safety, welfare and prosperity of the people. The purpose of this article is to:

- A. Safeguard the rural landscape and heritage of the City outside the VHS district by preserving sites and structures which reflect elements of the community's cultural, social, economic, political, visual, or architectural history.
- B. Protect and enhance the City's appeal to residents, visitors and tourists, and serve as a support and stimulus to business and commerce.
- C. Foster civic pride in the beauty and notable accomplishments of the past; and
- D. Promote the preservation and continued use of historic sites and structures for the education and general welfare of the people of the City.

Sec. 12-1527. Definitions.³⁹⁴

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:

³⁹² **Cross references**—Heritage preservation commission, § 2-150 et seq.; buildings and building regulations, § 12-1771 et seq.

³⁹³ Code 1982, § 308.000(01)

³⁹⁴ Code 1982, § 308.000(2), **Cross reference(s)**—Definitions generally, § 1-2.

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Certificate of approval means that documentation provided by the commission which evidences approval of activities proposed for a heritage preservation site.

Commission means the heritage preservation commission established in section 2-150 et seq.

Design review guidelines means those guidelines presented in this article and to be used in reviewing exterior alterations requiring a building permit for designated heritage preservation sites.

Heritage preservation site means any area, place, building, structures, lands, landscaping, districts, adjacent property or other objects which have been so designated pursuant to the provisions established by this article.

Secretary of the interior standards means those standards for preservation planning published by the Secretary of the Interior and published as the Standards for Rehabilitation by the U.S. Department of the Interior, National Park Service.

VHS district means the village historic site district defined in Section 12-142, and for which design review is provided through the Administrative Permit process.

Sec. 12-1528. Review of activities.³⁹⁵

The type of activities³⁹⁶ under this article to be reviewed are as follows:

- A. Remodel, repair, or change in any manner that will alter the exterior appearance of an existing building or site including painting, signage, awnings, landscaping or permanent interior remodeling which affects the exterior appearance;
- B. New construction including the expansion or enlargement of an existing building or site;
- C. Moving of buildings;
- D. Demolition in whole or part; or
- E. Public improvement projects which directly or indirectly affect a heritage preservation site.

Sec. 12-1529. Enforcement.³⁹⁷

- A. No activity as defined by this article shall occur on a heritage preservation site without having first received a certificate of approval issued by the commission. No application fee shall be returned to an applicant until the certificate of approval is provided. Activity initiated or completed without the consent of the commission and city as required shall be considered to be in violation of this article.
- B. Upon citing any violation of this article, the commission shall initiate actions necessary to resolve the violation, if a violation cannot be resolved with the cooperation of the affected parties, the commission shall initiate the following procedures:
 - 1. A written notice of violation will be provided to the owner or designated representative of the heritage preservation site. Such notice shall specify the nature of the violation and possible means for rectifying such violation.
 - 2. Such notice shall be issued by registered mail or hand delivered receipt requested to the owner or designated representative of the heritage preservation site. Upon receipt of the notice of violation, ten days will be allowed to rectify the violation to the satisfaction of the commission.
 - 3. If the violation is not rectified to the satisfaction of the commission as required, the City shall proceed to prosecute the matter as a misdemeanor punishable by fine, imprisonment or both in accordance with the laws of the state.

³⁹⁵ Code 1982, § 308.000(13)1

³⁹⁶ Ord 02-2009, 4/21/2009

³⁹⁷ Code 1982, § 308.000(13)3.

Secs. 12-1530--12-1620. Reserved.

DIVISION 2. DESIGN REVIEW GUIDELINES

Subdivision I. General Provisions

Sec. 12-1621. Purpose and intent.³⁹⁸

- A. The design review guidelines are the basis for the Zoning Administrator's and design review committee's conditional use review for properties within the VHS-R and VHS-C districts. They are also the basis for the heritage preservation commission's review of heritage preservation sites designated outside of the VHS-R and VHS-C districts.
- B. The preface to the guidelines is based on the U.S. secretary of the interior's standard for rehabilitation. The design guidelines further identify key visual and architectural characteristics of buildings in the district to ensure that they are preserved and enhanced in rehabilitation or new construction. They provide standards for considering the impact of exterior alterations on the individual building as well as on an entire district.
- C. The guidelines are intended to be flexible, and the conditional use review will be conducted on a case-by-case basis. With regard to alterations to existing buildings, the expense of certain restoration techniques, the availability and expense of historic materials, and economic hardship are among factors which should be considered by the Zoning Administrator, design review committee to the Planning Commission, and the heritage preservation commission.

Sec. 12-1622. General principles.³⁹⁹

The general objective of the design review guidelines is to maintain the architectural and visual qualities of existing historic buildings and streetscapes and to encourage architecturally compatible new design. The guidelines are based on the secretary of the interior's standards for rehabilitation as well as on an analysis of the specific characteristics of the City's historic buildings.

- A. All work should be of a character and quality that maintains the distinguishing features of the building and the environment. The removal or alteration of distinctive architectural features should be avoided as should alterations that have no historical basis and which seek to create an earlier appearance. The restoration of altered original features, if documentable, is encouraged.
- B. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- C. Deteriorated architectural features should be repaired rather than replaced whenever possible. In the event of replacement, new materials should match the original in composition and design including consideration of proportion, texture, detail, color, and overall appearance.
- D. New additions or alterations to structures should be constructed in such a manner that if such additions or alterations were to be removed in the future, the form and integrity of the original structure would be unimpaired.
- E. The impact of alterations or additions on individual buildings as well as on the surrounding streetscape will be considered; major alterations to buildings which occupy a corner lot or are otherwise prominently sited should be avoided.
- F. New construction should be compatible with the historic and architectural character of the district.

³⁹⁸ Code 1982, § 309.000

³⁹⁹ Code 1982, § 309.101

Secs. 12-1623--12-1665. Reserved.

Subdivision II. Restoration and Rehabilitation

Sec. 12-1666. Masonry walls and foundations.⁴⁰⁰

Although most buildings in the district are of wood frame construction, there are a few brick, stucco, and concrete block examples, and all rest on masonry foundations. Masonry must be cared for properly. Poor maintenance, cleaning or repair can result in extensive water damage and eventual structural failure.

- A. *Repair.* Deteriorated brick, stone, mortar, and other materials should be replaced with material used in the original construction or with materials that resemble the appearance of the original as closely as possible. The advice of a skilled mason should be sought for major repair projects.
- B. *Cleaning.* Masonry cleaning should be conducted only to halt deterioration and by means such as low pressure water, soft brushes, and/or appropriate chemical treatment. Sandblasting should not be used under any circumstances.
- C. *Repointing.* Original mortar joint size and profile should be retained and/or reduplicated in repointing. Mortar mixtures should duplicate the original in lime, sand, and cement proportion and should duplicate the original mortar in color and texture.
- D. *Stucco resurfacing.* Repairs to stucco surfaces should duplicate the original in color and texture, if evidence exists. Smooth or heavy dashed surfaces should be avoided unless they were used on the original surface.
- E. *Painting.* The original color and texture of masonry surfaces should be retained and unpainted stone and brick surfaces should not be painted. The removal of paint from painted masonry surfaces should only be attempted if unpainted surfaces are historically appropriate and if removal can be accomplished without damage to the masonry.
- F. *Resurfacing.* Stucco, artificial stone, brick veneer, or vinyl or aluminum products should not be applied over masonry surfaces.

Sec. 12-1667. Walls; wood sided.⁴⁰¹

Wood building products, including siding, shingles, and a great variety of decorative trim were used extensively by the 19th and early 20th-century builders of the City. Wood contributes texture and detail to the historic streetscape, and is a durable, high-quality material with a long product life if properly maintained.

- A. *Repair.* Wooden siding should be maintained with paint or stain. Deteriorated wooden siding should be replaced with new material resembling the original in width, thickness and profile, and texture. New siding should be installed with the weather (exposed surface) identical to the original. Siding should be installed horizontally except in those instances where vertical or diagonal siding was used on the original exterior. Appropriate corner boards, frieze boards, and drip caps and other features should be included with replacement siding.
- B. *Vinyl and aluminum siding; other manufactured products.* Buildings originally clad in wooden siding should not be resurfaced with brick, stucco, artificial stone or brick veneer, hardboard, or vinyl or aluminum siding. The Zoning Administrator or commission may consider the following exceptions to the installation of vinyl, metal, or hardboard siding on a case-by-case basis:
 - 1. In cases where existing asphalt, asbestos, aluminum or vinyl siding is to be removed and where the underlying original siding and decorative features are found to be significantly deteriorated, the Zoning Administrator or commission should conduct a site visit during the removal process and advise on appropriate treatment.

⁴⁰⁰ See also Chimney guidelines, Section 12-1668, Code 1982, § 309.102(1)

⁴⁰¹ Code 1982, § 309.102(2)

2. In the resurfacing of noncontributing buildings constructed after 1940.
3. In the resurfacing of existing or construction of new garages, particularly when the garage is inconspicuously sited.

If vinyl, metal, or hardboard siding is used, it must be of a width appropriate to the style of the building, and all architectural details including window trim, wood cornices and ornament must remain uncovered. Replacement siding may cover only one layer of existing siding. Trim must be built up so that it projects from the new siding to the same extent as the original.

- C. *Shingles*. Buildings originally clad in horizontal wooden siding should not be resurfaced with shingles of wood or other material. Wooden shingles used for cladding material or decoration, such as in the gable ends, should be conserved and retained. If replacement is necessary, shingles should replicate the original in width, pattern, thickness, profile, texture, and weather (lap).
- D. *Decorative siding treatments*. Decorative siding treatments, such as paneled herringbone patterns used in the gable ends, should be retained in repair or resurfacing.
- E. *Painting*. Exterior wooden surfaces should be maintained with appropriate paint or stain.

Sec. 12-1668. Roofs and chimneys.⁴⁰²

The shape, texture, and color of the roof are important design features of any building. Gable and hipped roofs are most common for residential construction, while flat roofs are found on some commercial buildings. Many of the early houses of the City were roofed in cedar shingles and later reroofed with asphalt shingles. Properly selected, modern asphalt roofing materials are compatible with the appearance of historic buildings.

- A. *Roofing materials*. New roofing material should be appropriate to the character of the building in composition, size, shape and texture. Dark brown, dark gray, and "weathered wood" are among usually acceptable colors. Rolled roofing may be used only on flat or slightly sloped roofs which are not visible from the public way.
- B. *Alterations to roof shape; front*. The original roof type, slope, and overhangs should be preserved. The roof shape at the front should not be altered except to restore it to the original documented appearance or to add architecturally compatible dormers. Documentation includes evidence of the former appearance of the building, or, in the case of pattern book houses, those of similar period and style. The shape of existing dormers should not be altered unless compatible with the original design.
- C. *Alterations to roof shape; rear*. Alterations to the roof shape at the sides or rear should be compatible with the architectural character of the building.
- D. *Skylights*. Wherever possible, skylights should not be installed on the front roof plane. They should be flat and as close to the roof plane as possible.
- E. *Rebuilt chimneys*. If rebuilding is necessary, original brick details such as decorative panels and coffers should be replicated. In the absence of evidence of the original appearance of the chimney, repair or rebuilding should be compatible with the building style or type.
- F. *Chimneys and stovepipes*. Wherever possible, new chimneys and stovepipes should not be installed on the front roof plane.

Sec. 12-1669. Windows.⁴⁰³

Many of the historic windows of the City have double-hung sash and a vertical orientation. Windows are important design elements and establish the visual rhythm, balance and general character of the facade. Any alteration, including removal of moldings or changes in window size or type, can have a significant and often detrimental effect on the appearance of the building as well as on the surrounding streetscape.

⁴⁰² Code 1982, § 309.102(3)

⁴⁰³ Code 1982, § 309.102(4)

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- A. *Size and shape.* Existing window openings should be retained. Window openings should not be enlarged or reduced significantly to fit new units. New window openings should not be introduced into principal elevations.
- B. *Sash.* The size and number of panes of glass in each sash should not be altered. New sash, if installed, should duplicate the existing or other appropriate historic models. Crank-out units are not appropriate replacements for double-hung sash, particularly where visible from the public way.
- C. *Trim.* Historic window casings should be retained wherever possible; if replacement is necessary the original profile should be replicated.
- D. *Storm windows.* If combination metal storms are installed, they should have a baked enamel finish. Storm windows should not have vertical or horizontal divisions which conflict with the divisions of the sash.

Sec. 12-1670. Entries.⁴⁰⁴

The entry, including the door, door surround, and sometimes sidelights and a transom, is usually the focal point of the facade. The size of the entry is directly related to the mass and scale of the building. As with windows, any alteration to size, shape, or trim details can have a detrimental effect on exterior appearance.

- A. *Size and shape.* All historic entry components should be retained. Entry openings should not be enlarged or reduced to fit a new door. New entry openings should not be introduced into principal elevations.
- B. *Trim.* Original or historic features of the entry, including hoods, columns, sidelights and transoms should be retained. If replacement is necessary, historic trim details should be replicated.
- C. *Doors.* Wherever possible, historic paneled doors (and hardware) should be repaired and weather-stripped rather than replaced. If replacement of original or historic doors is necessary, the replacement should duplicate and be compatible with the material, design, and hardware of the older door. Steel-covered hollow core doors should not be installed unless compatible with the appearance of the house. Historic trim should not be removed from the entry for the installation of steel doors.
- D. *Storm and screen doors.* Storm doors should be compatible with the inner door in shape and style.
- E. *Sliding glass doors.* Sliding glass doors should be confined to the rear of the building where not visible from the public way.

Sec. 12-1671. Porches and steps.⁴⁰⁵

Most of the 19th and early 20th-century houses of the City had unenclosed front porches. The porch usually stretched across the full width of the front facade, but in some cases only covered the entry. Since porches and steps are exposed to the weather and receive hard use, some buildings have had a succession of replacements which reflect different styles of architecture.

- A. *Conservation.* Porches, steps, and handrails which are appropriate to the building and its period of development should be conserved and retained.
- B. *Repair and replacement.* Historic porches, steps, or handrails which require complete rebuilding or partial replacement should be reconstructed using historical research to determine an appropriate design. Reconstructions should be compatible with the period and style of the building in material, design, and detail. Concrete should not be used to replace wooden porch floors or steps.
- C. *Railings.* The original spacing, section, and profile of balusters should be maintained in replacement or repair. Unless historical evidence indicates, reconstruction should include a bottom rail and balusters should not be nailed directly to the step or deck. Metal railings should not be used to replace wooden railings.

⁴⁰⁴ Code 1982, § 309.102(5)

⁴⁰⁵ Code 1982, § 309.102(6)

- D. *Posts and columns.* If replacement is necessary, porch posts and columns should be replaced with units that replicate the original material, size, and scale. Elaborate details such as turning, gouging, or stamping may be simplified if necessary. Wooden posts should not be replaced with metal posts or supports.
- E. *Enclosure.* Unenclosed front porches should not be permanently enclosed.
- F. *Decks.* Decks should be constructed only at the rear of the building or where most inconspicuous. Railings, steps, and other deck details should be compatible with the architectural character of the building.

Sec. 12-1672. Exterior trim and architectural features.⁴⁰⁶

Exterior trim includes the decorative and sometimes functional elements of the exterior which contribute to the proportion, texture, and detail of the building. A great variety of machine-made trim was added to even the simplest wooden houses and commercial buildings.

- A. *Conservation.* Exterior architectural features including finials, cornices, brackets, columns, balustrades, railings, and window and door moldings should be retained.
- B. *Documentation.* Original trim details and other architectural features should be photographed or otherwise recorded before they are removed for repair or replacement. Deteriorated trim which is removed should be saved for use in making duplicates.
- C. *Repair and replacement.* New material used to repair or replace deteriorated trim or other features should match the original as closely as possible. Deteriorated trim which is unsalvageable should be replaced with trim identical or similar to the original design. Simplified trim should approximate the old in design and placement.
- D. *New trim.* Details should not be added in an effort to make the building look older. However, in the case of some pattern book houses, the addition of certain trim details such as those typical at the gable and porch may be acceptable if supported by historic photos or pattern book sources.

Sec. 12-1673. Commercial buildings; rehabilitation and restoration.⁴⁰⁷

The nonresidential buildings within the district are of simple construction and style. Each building is unique; some commercial buildings occupy former houses. Those with storefronts generally have a two-part horizontal division with glazed (or once-glazed) storefronts at the first story.

- A. *Conservation.* The original appearance of commercial buildings and storefronts, when present, should be conserved. Decorative features should be retained in repair and renovation projects. Storefronts should not obscure the basic architectural framework of the buildings which they occupy. Storefront design should not reproduce styles of a period earlier than the building they occupy.
- B. *Masonry surfaces.* Masonry and other original surfaces should be conserved. Brick should not be covered with stucco, shakes, or other veneer.
- C. *Windows.* Windows should not be filled in with wood, brick, or any other material. Window sizes and shapes should be maintained if removal of original units is necessary.
- D. *Roofs and parapets.* The original roofline, including cornice, parapet and other elements, should be maintained.
- E. *Signs.* Signs should be compatible with the character of the building and surrounding area. Signs should be appropriately sized and complement the building exterior. They should not conceal architectural details or features. Sign materials should be compatible with the materials of the building to which they are attached.

⁴⁰⁶ Code 1982, § 309.102(7)

⁴⁰⁷ Code 1982, § 309.102(8)

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No part of the historic facade should be damaged in the installation of the sign. Rooftop signs are inappropriate.

- F. *Awnings.* Awnings should be sized to fit the windows and storefronts behind them. They should not greatly obscure the architectural features behind them. Canvas is the most suitable material for most storefronts.

Secs. 12-1674--12-1710. Reserved.

Subdivision III. New Constructions and Additions

Sec. 12-1711. General guidelines.⁴⁰⁸

The objective of guidelines for new construction is to encourage a high standard of historically compatible new design. New buildings and structures should be compatible with the size, scale, massing, height, rhythm, setback, color, material, building elements, site design and character of surrounding structures as well as the broad context of the district or area. Other applicable zoning regulations should be consulted before planning new construction.

- A. *Site evaluation.* Whenever possible, existing historic buildings and landscape features should be retained and rehabilitated in plans for redevelopment.
- B. *General character.* New construction should reinforce the historic architectural and visual character of the district; specifically, it should refer to the traditional one- and two-story dwelling and commercial building module, and typical setbacks already established in the district.
- C. *Pedestrian circulation and parking.* New construction should be oriented toward streets which are inviting environments for pedestrians. Parking areas should be placed at the rear of buildings wherever possible, or screened with landscaping, low walls, or appropriately detailed fences.
- D. *Views and vistas.* Wherever possible, distinctive views of the river and bluffs provided from the public way should not be obstructed by new buildings or structures.

Sec. 12-1712. New construction.⁴⁰⁹

- A. *Siting and setback.* New construction should maintain the uniform setback of older residential and commercial buildings along the street.
- B. *Massing, height, and scale.* New construction should conform to the massing, volume, height, facade proportions and scale of buildings within view of the site, and also comply with existing zoning regulations. The gross volume of any new structure should be visually compatible with the buildings and elements within the surrounding area.
- C. *Materials and details.* Although the architectural character of the district is quite eclectic, materials and details should be compatible with adjacent buildings. Wood and masonry are preferable to vinyl, metal, or hardboard siding. Imitative materials such as artificial stone or brick veneer should not be used. The use of vinyl, metal, or hardboard siding will be considered by the Zoning Administrator or commission on a case-by-case basis.
- D. *Parking.* Parking areas should be located at the side or at the rear of the buildings and should be screened with landscaping, low walls, or appropriately detailed fences. A vegetation screening plan should accompany plans for parking development.
- E. *Building elements:*
 - 1. *Roofs.* In new construction, the skyline or roof profile should relate to the predominant roof shapes of the surrounding area. Roofing materials used on new buildings should be appropriate to the design of

⁴⁰⁸ Code 1982, § 309.103(1)

⁴⁰⁹ Code 1982, § 309.103(2)

the building and the visibility of the roof. Roof hardware such as skylights, vents, and metal pipe chimneys should not be placed on the front roof plane.

2. *Windows and entries.* Prominent first-floor display windows and distinctive entries facing the street are typical for existing historic commercial buildings. Similarly, vertically-oriented, double-hung sash is the predominant window type for the upper stories of residential buildings within the district. The location, proportion, size, rhythm and detailing of windows and entries should address these traditional forms.
3. *Signs and lighting.* Signs, graphics, and lighting should be designed as part of the facade. Signs on commercial blocks housing several adjacent businesses should be designed to unify the facade, while providing identity for individual businesses. Type, style, sign color, and sign materials should complement the building exterior. Lighting should be compatible with the building exterior and signs. Internally lighted signs should not be used where they overpower the facade or setting.

Sec. 12-1713. Additions to principal buildings.⁴¹⁰

- A. *Massing and scale.* New construction should conform to the massing, volume, height, facade proportions and scale of surrounding structures and also comply with existing zoning regulations. The gross volume of any new structure should be visually compatible with the buildings and elements within the surrounding area. New dwellings and commercial buildings should be compatible with the height of existing adjacent buildings.
- B. *Materials and details.* Materials and details should relate to those of existing nearby buildings. Wood and masonry are preferable to vinyl, metal, or hardboard siding. Imitative materials such as artificial stone or brick veneer should not be used. Materials will be reviewed to determine their appropriate use in relation to the overall design of the structure. The use of vinyl, metal, or hardboard siding will be considered by the Zoning Administrator or commission on a case-by-case basis.
- C. *Building elements:*
 1. *Roofs.* In new construction, the skyline or roof profile should relate to the predominant roof shape of nearby buildings. Highly visible secondary structure roofs should match the roof pitch of the main structure. The roofing materials used on new buildings should be appropriate to the design of the building and the visibility of the roof. Roof hardware such as skylights, vents, and metal pipe chimneys should be placed on the front roof plane.
 2. *Windows and entries.* Vertically oriented, double-hung sash are the predominant historic window type in the City, although there are exceptions. The proportion, size, rhythm and detailing of windows and entries should be compatible with that of existing nearby buildings. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with surrounding structures.
 3. *Porches and decks.* Porches are a standard feature of many historic houses in the City and whether enclosed or unenclosed they are an important part of the streetscape. The front entry of new construction in residential areas should be articulated with a design element such as a porch, portico, or landing which provides a transitional zone between the semipublic and public exterior zones and the private interior zone. This design element should be appropriately detailed and compatible with the size and scale of the building. Decks should be constructed at the rear of the building and should be integrated into the overall design. Decks should be appropriately detailed and should not be raised in a manner which makes them conspicuous.

Sec. 12-1714. Accessory buildings.⁴¹¹

Garages and other accessory buildings shall be compatible with the overall design and materials of the existing buildings on the lot. New garages should be located at the rear of the site wherever possible. Garages should not be attached to the front of the building.

Sec. 12-1715. Site considerations.⁴¹²

⁴¹⁰ Code 1982, § 309.103(3)

⁴¹¹ Code 1982, § 309.103(4)

⁴¹² Code 1982, § 309.103(5)

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- A. *Setback and siting.* The setback of new buildings should be compatible with the setback of existing adjacent buildings.
- B. *Parking.* Residential parking areas should be confined to the rear of existing or new buildings. Parking spaces should be screened from view from the public street by landscaping such as hedges, grade changes, or low fences.
- C. *Fences.* Fences which allow some visual penetration of front yard space are preferable to complete enclosure. Cyclone fences should not be used to enclose front yards in the front half of side yards.

Sec. 12-1716. Public improvements.⁴¹³

New street and landscape improvements, lighting, street furniture and signs should be compatible with the character of the district. The historic urban pattern of grid-plan streets should be retained.

Sec. 12-1717. Signs.⁴¹⁴

Sign materials and design should complement the materials and design of the building and adjacent buildings.

Secs. 12-1718--12-1770. Reserved.

ARTICLE VIII. BUILDINGS AND BUILDING REGULATIONS⁴¹⁵

DIVISION 1. GENERALLY

Secs. 12-1771--12-1800. Reserved.

DIVISION 2. BUILDING CODE⁴¹⁶

Sec. 12-1801. Adopted.⁴¹⁷

The Minnesota State Building Code, established pursuant to M.S.A. §§ 16B.59--16B.75, one copy of which is on file in the office of the City Administrator, is hereby adopted as the building code for the City. Such code is hereby incorporated in this article as completely as if set out in full.

Sec. 12-1802. Administration required.⁴¹⁸

As periodically adopted and amended by the State of Minnesota, the International Building Code will be administered as the Building Code for the City.

Sec. 12-1803. Application, administration and enforcement.⁴¹⁹

⁴¹³ Code 1982, § 309.103(6)

⁴¹⁴ Code 1982, § 309.103(7), **Cross reference(s)**--Signs generally, § 12-210.

⁴¹⁵ **Cross references**--Building department, § 2-201 et seq.; building official, § 2-111 et seq.; building permits in the building code regarding zoning, § 12-81; floodplain regulations, § 12-901 et seq.; manufactured homes, mobile homes, travel trailers, etc., prohibited in floodplain district, § 12-912; heritage preservation, § 12-1526 et seq.; use of individual sewage treatment systems, § 12-2006 et seq.; individual sewage treatment systems, § 12-2076 et seq.; construction and materials for building sewers, § 12-2165; numbering buildings, § 20-61 et seq.; utilities, ch. 24.

⁴¹⁶ **State law reference**--Authority to regulate the construction of buildings, M.S.A. § 412.221, subd. 28; **State law reference**--State building code applicable throughout the state, M.S.A. § 16B.62.

⁴¹⁷ Res 1995-11, § 401.101, 11-21-95; Res 1997-16, § 21, 6-17-97, **State law reference(s)**--Authority to adopt codes by reference, M.S.A. § 471.62.

⁴¹⁸ Ord 1997-20, 4/20/99, Sec. 12-1802 Repealed and Replaced

⁴¹⁹ Res. No. 1995-11, § 401.201, 11-21-95

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- A. The application, administration and enforcement of the building code adopted in Section 12-1801 shall be in accordance with MN Rule, § 1300.2100.
- B. The building code department shall be the building code department of the City. The administrative authority shall be a state-certified building official.
- C. The appointing authority shall designate the building code administrative authority for the jurisdiction of the City.

Sec. 12-1804. Permits, inspections and fees.⁴²⁰

- A. Permits, inspections and collection of fees shall be authorized in M.S.A. Stat. 16B.62, subdivision 1. The building permit fee schedule for the City shall be established by resolution of the City Council.
- B. In addition to the permit fee required by Subsection (A) of this section, the applicant shall pay a surcharge to be remitted to the state department of administration as prescribed by M.S.A. § 16B.70.
- C. In addition to the basic building permit fee, a park fee is hereby imposed on each new home building permit as stated in chapter 12, article VI, pertaining to subdivisions.

Sec. 12-1805. Violations and penalties.⁴²¹

A violation of the building code adopted in Section 12-1801 is a misdemeanor and shall, upon conviction, be punished as provided in Section 1-13.

Secs. 12-1806--12-1850. Reserved.

DIVISION 3. FIRE PREVENTION AND LIFE SAFETY CODE⁴²²

Sec. 12-1851. Adopted.⁴²³

There is hereby adopted by the City for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code and standards known as the Uniform Fire Code, including Appendix Chapters I-A, I-B, II-A, II-B, II-C, II-D, III-A, III-B, III-C, IV-A, V-A, VI-A, VI-C, VI-D, and the Uniform Fire Code Standards published by the Western Fire Chiefs Association and the International Conference of Building Officials and the Minnesota Uniform Fire Code being particularly the 1982 Edition thereof and the whole thereof. One copy of these codes and standards must be and are now filed in the office of the clerk of the City and the same are hereby adopted and incorporated as fully as if set out at length herein. From the date on which the ordinance from which this division was derived shall take effect, the provision thereof shall be controlling within the limits of the City.

Sec. 12-1852. Establishment, duties of bureau of fire prevention.⁴²⁴

- A. The **Uniform Fire Code** shall be enforced by the Bureau of Fire Prevention in the fire department of the Lower St. Croix Valley Fire Protection District which is hereby established and which shall be operated under the supervision of the chief of the fire department.
- B. The chief (or marshal) in charge of the Bureau of Fire Prevention shall be appointed by the Lower St. Croix Valley Fire Protection District on the basis of established procedures.

⁴²⁰ Ord 1997-20, 4/20/99, Ord. 2004-25, 4/20/04, Res. No. 1995-11, § 401.301, 11-21-95, **Cross reference--** Building permits in subdivisions, § 12-1268.

⁴²¹ Res. No. 1995-11, § 401.401, 11-21-95, **State law reference--** Similar provisions, M.S.A. § 16B.69.

⁴²² **State law references--** Authority to adopt ordinances to prevent, control or extinguish fires, M.S.A. § 412.221, subd. 17; fire prevention in cities, M.S.A. ch. 438.

⁴²³ Code 1982, § 402.101, **State law reference--** Authority to adopt codes by reference, M.S.A. § 471.62.

⁴²⁴ Code 1982, § 402.102

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- C. The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary. The chief of the fire department shall recommend to the Lower St. Croix Valley Fire Protection District the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the fire department, and appointments made after examination shall be for an indefinite term with removal only for cause.

Sec. 12-1853. Definition.⁴²⁵

Wherever the word "jurisdiction" is used in the **Uniform Fire Code**, it means the City of Afton.

Sec. 12-1854. New construction and renovation.⁴²⁶

All plans and specifications for new construction and renovation of commercial and public buildings, shall be submitted to and approved by the fire department, fire prevention bureau officer, prior to the start of construction.

Sec. 12-1855. Appeals.⁴²⁷

Whenever the chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the codes adopted by this article do not apply or that the true intent and meaning of the codes have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief to city within 30 days from the date of the decision appealed.

Sec. 12-1856. Open burning prohibited.⁴²⁸

It shall be unlawful for any person to start or allow to burn, any open fire on any property within the City without first having obtained a permit therefor⁴²⁹ from the Lower St. Croix Valley Fire Protection District, except for supervised recreational or cooking fires contained within approved fire rings, pits or barbecue grills.

Sec. 12-1857. Rules adopted by reference.⁴³⁰

Chapter 8, State of Minnesota Air Pollution Control Rules current edition as amended May 13, 1976, is hereby adopted by reference and is made a part of this division as if fully set forth herein. Three copies of such rules are on file with the City Clerk.

Secs. 12-1858--12-1900. Reserved.

ARTICLE IX. SEWAGE⁴³¹

DIVISION 1. GENERALLY

Secs. 12-1901--12-1950. Reserved.

⁴²⁵ Code 1982, § 402.103, **Cross reference**--Definitions generally, § 1-2.

⁴²⁶ Code 1982, § 402.104

⁴²⁷ Code 1982, § 402.105

⁴²⁸ Code 1982, § 402.106, **Cross reference**--Open fires in parks prohibited, § 16-7.

⁴²⁹ Ord 02-2009, 4/21/2009

⁴³⁰ Code 1982, § 402.107

⁴³¹ **Cross references**—Zoning and water supply sanitary requirements for shoreline management, § 12-401 et seq.; Lower St. Croix River management requirements for sewage disposal, § 12-587; floodplain management on-site sewage treatment and water supply systems, § 12-1143. **State law references**—Authority to establish and maintain sewers, M.S.A. § 412.221, subd. 6; authority to build and construct sewers and sewage disposal plants, M.S.A. § 444.075.

DIVISION 2. SEWER USE⁴³²

Subdivision I. Generally

Sec. 12-1951. Purpose.

This article is adopted for the purpose of:

- A. Protecting the health, safety, and welfare of the residents of the community, present and future and in accordance with the City's SDS, and where applicable, NPDES permit.
- B. Regulating the discharge of wastes into soil treatment units and associated collection systems which would have an adverse effect on the operation and maintenance of the wastewater treatment facilities.

Sec. 12-1952. Definitions.⁴³³

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:

Active maintenance means a maintenance program for individual sewage treatment systems whereby the property owner has complete responsibility for effecting operation, maintenance and replacement (OM&R) in a manner acceptable to the City.

Building drain means that part of the lower horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer which begins at least one foot outside the building line.

Building sewer means that part of the drainage system which extends from the end of the building drain and conveys its discharge to the public sewer, private sewer, individual sewage-disposal system, or other point of disposal.

BOD. Biological Oxygen Demand. BOD is the amount of oxygen required for organic material breakdown. It is often used as a gauge for organic water quality.

Community sewage treatment system means a sewage treatment system which collects sewage from two or more residences or other establishments, consisting of: Collector lines, pumps, sewage tanks, and soil treatment unit. Also known as a cluster system or collector system.

Easement means a legal transfer of rights, privileges or uses of private property.

Equivalent Residential Units (ERU). Wastewater charges will be established based on Equivalent Residential Units (ERU). One ERU is defined as a unit of wastewater volume of 240 gallons per day with a theoretical waste strength of 300 mg/l of BOD, 200 mg/l of TSS, and 50 mg/L O&G.

Garbage means solid waste resulting from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, or sale of meat, fish, fowl, fruit, or vegetables and condemned food.

Historic Village Sewage Treatment Service Area (HVSTSA) means that part of the city served by the publicly operated Large Subsurface/Sewage Treatment System as shown in the Comprehensive Plan.

Individual subsurface sewage treatment system (ISTS) or On-site sewage treatment system means an individual sewage treatment system or part thereof, as set forth in Minnesota Statutes, sections 115.03 and 115.55, that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade that are designed to receive a sewage design flow of 5,000 gallons per day or less. ISTS includes the holding tanks and privies, but does not include any pump tanks used in a sewage collection system. ISTS does not include building sewers or other components regulated under Minnesota Rules, Chapter 4715, or sewage collection systems.

⁴³² **Cross references**—Septic permits regarding zoning, § 12-83; sewers and subdivisions, § 12-1428

⁴³³ **Cross reference**--Definitions generally, § 1-2; Ord 08-2010, 9/21/2010; Ord 04-2015, 9/15/2015

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Industrial wastes means the solid, liquid, or gaseous waste resulting from industrial or manufacturing processes, trade or business, or from the development, recovery or processing of natural resources.

Industry means any nongovernmental or nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, latest edition, categorized in Divisions A, B, D, E and I.

Large Subsurface/Sewage Treatment System (LSTS) means a subsurface collection and sewage treatment system that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade and that is designed to receive sewage design flow of greater than 10,000 gallons per day.

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

Normal domestic strength wastes means wastes which are characterized by a per capita discharge of 75 gallons per day at a loading of 300 mg per liter BOD, 200 mg per liter TSS, and 50 mg per liter O & G.

O&G (also known as FOG) means oil and grease (or fat, oil and grease), a component of sewage typically originating from foodstuffs such as animal fats or vegetable oils or consisting of compounds of alcohol or glycerol with fatty acids such as soaps and lotions, typically expressed in mg/l.

Operation and maintenance means activities required to provide for the dependable and economical functioning of the treatment system, throughout the useful life of the treatment works, and at the level of performance for which the treatment works were constructed. Operation and maintenance includes replacement.

Other wastes means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, oil, tar, chemicals, offal, and all other substances except sewage or industrial waste.

Passive maintenance means a maintenance program for community sewage treatment systems whereby the community in which the treatment system is situated is responsible for conducting operation, maintenance and replacement in a manner acceptable to the City.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water, and groundwater are not intentionally discharged.

Sanitary waste means the liquid and water carried wastes discharged from sanitary plumbing facilities.

Sewer means a pipe or conduit for carrying sewage, industrial wastes or other waste liquids.

Sewer system means pipelines or conduits, pumping stations, forcemains, and all other devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of ultimate disposal.

Slug means any discharge of water, wastewater or industrial waste which in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24 hour concentration or flow during normal operation.

State Disposal System (SDS) Permit means any permit including any terms, conditions and requirements thereof issued by the MPCA pursuant to M.S.A. § 115.07 for a disposal system as defined by M.S.A. § 115.01, subd. 8.

Suspended solids (TSS) means solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

Toxic pollutant means the concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards pursuant to section 307(a) of the Clean Water Act.

Unpolluted water means clean water uncontaminated by industrial wastes, other wastes, or any substance which renders such water unclean or noxious or impure so as to be actually or potentially harmful or detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial or recreational uses; or to livestock, wild animals, birds, fish, or other aquatic life.

Wastewater facility means the structures, equipment, or processes required to collect, convey, and treat domestic and commercial waste and dispose of the effluent.

(Ord 08-2010, § 12-1952, 9/21/10)

Sec. 12-1953. Connection to Individual Subsurface Septic Treatment System (ISTS) and Community Septic Treatment Systems.

- A. All improved properties not located in the Historic Village Sewage Treatment Service Area shall be connected to a compliant ISTS, per Minnesota Rules.

Sec. 12-1954. Connection to Large Subsurface Treatment System (LSTS).

This article shall apply and be in effect for the stated purposes within the Historic Village Sewage Treatment Service Area, as shown in the Comprehensive Plan. Any property outside of the HVSTSA shall be connected to an individual subsurface sewage treatment system (ISTS) meeting the requirements of Section 12-83 of the Zoning Code ("Septic Permits") or to a community sewage treatment system approved under the authority of the City.

- A. The sewer permit fee and sewer connection charges shall be established by the City, as outlined in the City's fee schedule.
- B. At the time the LSTS becomes available to properties within the HVSTSA, the City Engineer shall contact the property owner in writing notifying them of the availability of the LSTS and requesting completion of a sewer permit and to schedule a connection. Properties previously connected to the "201" community sewage treatment system or with existing ISTS which are failing to adequately treat sewage, posing a hazard to the public health or otherwise deemed by the City to be non-complaint shall connect within 60 days from when the sewer becomes available.
- C. All properties located in the HVSTSA shall be connected to the LSTS no later than December 31, 2024.
- D. Properties within the HVSTSA where construction is proposed for a new structure with a building drain requiring sewage treatment shall not be granted final building permit approval without the issuance of a sewer permit to connect to the LSTS system.
- E. The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the state building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in the amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9, shall apply.

Sec. 12-1955. Inspections.

Inspections of ISTS, community systems, or connections to LSTS as required to determine compliance with this article shall be performed by the City Administrator or his/her agent under the following circumstances:

- A. Duly authorized employees of the City shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. Those employees shall have no authority to inquire into processes including metallurgical, chemical, oil refining, ceramic, paper, or other industries except as is necessary to determine the kind and source of the discharge to the public sewer.
- B. The owner or occupant of a property shall be responsible to provide access at reasonable times, to the City Administrator or his/her agent, for the purpose of performing inspections required under this article.

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- C. While performing the necessary work on private property as referred to in Subsection (A) of this section, the authorized employees of the City shall observe all safety rules applicable to the premises.
- D. Fees for inspections, maintenance, or other services rendered under this article shall be as set by resolution of the City Council from time to time.

Sec. 12-1956. Enforcement.

- A. The City Administrator and his/her agent shall be responsible for administration and enforcement of this article.
- B. The City Administrator or his/her agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of ISTS and connections to LSTS and shall carry a current individual sewage treatment system certificate and a current class C operators certificate.

Sec. 12-1957. Appeals or variance requests.

- A. The City Council shall hear and decide appeals and review any order, decision or determination made by the City Administrator and his/her agent regarding the enforcement of this article.
- B. The City Council shall hear and act upon all rate adjustment and variance requests.
- C. Any appeal of an administrative decision or determination may be filed by any person, department, bureau, town, city, county, or state which is aggrieved by the decisions.

Sec. 12-1958. Violations and penalties.

- A. It is hereby declared unlawful for any person to violate any term or provision of this article. All violations and penalties of this Chapter shall following the procedures set forth in Chapter 1-13 of the City Code.
- B. If no action or remedy is made regarding making a required connection to the LSTS, the City will make that connection to the LSTS and shall assess the cost of connection to benefitting properties.

Secs. 12-1958--12-1980. Reserved.

Subdivision II. Use of Public Sewage Treatment Systems

Sec. 12-1981. Unlawful surface discharge.

It shall be unlawful to discharge to any natural outlet within the City or any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article and the City's National Pollutant Discharge Elimination System (NPDES) permit.

Sec. 12-1982. Unlawful connection to public sewage treatment system, permit.

It shall be unlawful for any person to connect a building sewer to the large subsurface treatment system in the HVSTSA without first obtaining a sewer permit from the City.

Sec. 12-1983. Reserved. ⁴³⁴

Sec. 12-1984. Unlawful discharge to LSTS.

No person shall discharge or cause to be discharged directly or indirectly any waste which, by volume or strength or nature, may harm the LSTS facility or cause obstruction to the free flow in sewers or endanger life or cause a nuisance.

⁴³⁴ Ord 04-2015, 9/15/2015

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- A. No person shall discharge or cause to be discharged directly or indirectly any stormwater, groundwater, roof runoff, subsurface drainage, waste from on-site disposal systems, unpolluted cooling or processing water to the LSTS except as permitted by the City.
- B. No person shall connect a sump pump to the LSTS. Unlawful connections shall be subject to penalty, per city's fee schedule.
- C. Stormwater and all other unpolluted water shall be discharged to a storm sewer or to the ground surface, and as allowed by MPCA.
- D. No person shall discharge or cause to be discharged directly or indirectly to any treatment system the following substances:
 - 1. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the wastewater disposal system. Prohibited materials include, but are not limited to: gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
 - 2. Any water or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the wastewater treatment works.
 - 3. Any water or waste having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and people.
 - 4. Solid or viscous substances, either whole or ground, in quantities or of such size capable of causing obstruction to the flow in the sewers, or other interference with the proper continuation of the wastewater facilities such as, but not limited to, ashes, cinders, disposable diapers, glass grinding or polishing wastes, stone cuttings or polishing wastes, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, sanitary napkins, paper dishes, cups, milk containers, and other paper products.
 - 5. Noxious or malodorous liquids, gases, or substances which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance or repairs.
 - 6. Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, including wastes which may adversely affect⁴³⁵ the permeability of soils, such as dairy products and blood.
- E. No person shall discharge or cause to be discharged directly or indirectly the following described substances to the LSTS unless in the opinion of the City such discharge will not harm the wastewater facilities, nor cause obstruction to free flow in the LSTS, nor otherwise endanger life, limb, or public property, nor constitute a nuisance. In forming its opinion as to the acceptability of the wastes, the City may give consideration to such factors as the materials or construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment facilities, the City's SDS permit, and other pertinent factors. The City may make such determination either on a general basis or as to discharges from individual users or specific discharges, and may prohibit certain discharges from individual users because of unusual concentrations or combinations which may occur. The substances include:
 - 1. Any liquid or vapor having a temperature in excess of 150 degrees Fahrenheit (65 degrees Celsius).
 - 2. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 50 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius). Any garbage that has not been ground or comminuted to such degree that all particles will be carried freely in suspension under flows normally prevailing in the public sewers, with no particles greater than one-half inch in any dimension. Commercial sources shall have a grease interceptor internal or external prior to discharge. O & G must be intercepted prior to discharge.
 - 3. Any water or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not; substances not intended for use in household cleaning, including but not

⁴³⁵ Amendment 02-2009, 4/21/2009

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limited to solvents, pesticides, flammables, photo finishing chemicals, paint, and dry-cleaning chemicals, and medicines.

4. Chemically treated hot tub and all pool water; floor drains from garages.
5. Any water or wastes containing phenols or other taste or odor producing substances which constitute a nuisance or hazard to the structures, equipment, or personnel of the sewage works, or which interfere with the treatment required to meet the requirements of the state or federal government, or any other public agency with proper authority to regulate the discharge from the sewage treatment plant.
6. Any radioactive wastes or isotopes of such half-life or concentration that they are not in compliance with regulations issued by the appropriate authority having control over their use or may cause damage or hazards to the treatment works or personnel operating it.
7. Any water or wastes having a pH in excess of 9.5.
8. Materials which exert or cause:
 - a. Unusual concentrations of suspended solids, (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate).
 - b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - c. Unusual BOD or chemical oxygen demand in such quantities as to constitute a significant load on the wastewater treatment facilities.
 - d. Unusual volume of flow or concentration of waste constituting a slug.

Sec. 12-1985. Pretreatment, control and refusal of extraordinary wastes.

- A. If any water or wastes are discharged, or are proposed to be discharged directly or indirectly to the LSTS, which water or wastes do not meet the standards set out in or promulgated under this section, or which in the judgment of the City may have a deleterious effect upon the treatment facilities, processes, equipment, or receiving waters or which otherwise create a hazard to life, or constitute a public nuisance, the City may take all or any of the following steps:
 1. Refuse to accept the discharges.
 2. Require control over the quantities and rates of discharge.
 3. Require pretreatment to an acceptable condition for the discharge to the public sewers.
 4. Require payment to cover the added cost of handling or treating the wastes.
- B. The design and installation of a plant or equipment for pretreatment or equalization of flows shall be subject to the review and approval of the City, and subject to the requirements of 40 CFR 403, entitled Pretreatment Standards, and the state pollution control agency.
 1. Grease, oil, and mud interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Section 12-1984, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.
 2. Where preliminary treatment, flow equalization, or interceptors are required for any water or waste, they shall be effectively operated and maintained continuously in satisfactory and effective condition by the owner at his expense and shall be available for inspection by the City at all reasonable times.
 3. When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structure and equipment, when required, shall be constructed at the owner's expense in accordance with plans approved by the City and shall be maintained by the owner so as to be safe and accessible at all times.
 4. All measurements, tests, and analyses of the characteristics of water and waste to which reference is made in this article shall be determined in accordance with 40 CFR 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants; the latest edition of Standard Methods for the Examination of Water and Wastewater and shall be determined at the control structure provided, or upon suitable samples taken at such control structure. If no special structure has been required, the control structure shall be considered to be the nearest downstream manhole in the public sewer from the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effluent constituents and their effect upon the treatment works and to determine the existence of

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hazards to life, health and property. Sampling methods location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the City.

5. The owner of any property serviced by a building sewer carrying industrial wastes shall, at the discretion of the City, be required to provide laboratory measurements, tests, and analyses of waters or wastes to illustrate compliance with this article and any special condition for discharge established by the City or regulatory agencies having jurisdiction over the discharge. The number, type, and frequency of sampling and laboratory analyses to be performed by the owner shall be as stipulated by the City. The industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with the federal, state, and local standards are being met. The owner shall bear the expense of all measurements, analyses and reporting required by the City. At such times as deemed necessary the City reserves the right to take measurements and samples for analysis by an outside laboratory.
6. New connections to the sanitary sewer system shall be prohibited unless sufficient flow capacity is available in all downstream facilities.
7. No statement 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 therefore by the industrial concern, providing that national categorical pretreatment standards and the City's NPDES and/or state disposal system permit limitations are not violated.

Secs. 12-1986--12-2005. Reserved.

Subdivision III. Use of Individual Sewage Treatment Systems ⁴³⁶

Sec. 12-2006—12-2040. Reserved. ⁴³⁷

Subdivision IV. Maintenance

Secs. 12-2041 – 12-2044. Reserved. ⁴³⁸

Secs. 12-2045 -- 12-2075. Reserved. ⁴³⁹

DIVISION 3. SEWAGE TREATMENT ⁴⁴⁰

Secs. 12-2076 -- 12-2200. Reserved.

DIVISION 4. WASTEWATER SERVICE CHARGE SYSTEM ⁴⁴¹

Subdivision I. Charges Established.

Sec. 12-2201. Sewer Utility and Connection Charges.

- A. Sewer Utility Charge. The City of Afton hereby establishes a Sewer Utility Charge System whereby revenue collected from users of the LSTS will be used to offset all expenditures incurred for administration, annual operation and maintenance and equipment replacement.
- B. Sewer Connection Charge. The City of Afton hereby establishes a Sewer Connection Charge whereby a one-time connection fee will be collected from new properties to cover the costs related to capital investments in

⁴³⁶**Cross reference**—Buildings and building regulations, § 12-1771 et seq.

⁴³⁷Ord 08-2010, § 12-2006, 9/21/2010

⁴³⁸Ord 08-2010, § 12-2041 through 12-2044, 9/21/2010

⁴³⁹Ord 1997-9, 1/13/98

⁴⁴⁰Ord 1997-9, 1/13/98; Ord 08-2010, § Article IX, Division 3, 9/21/10

⁴⁴¹ Ord 04-2015, 9/15/2015

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the LSTS. New properties shall include any properties connected to the LSTS that were not originally assessed for the construction, including those newly created lots through lot split or subdivision.

Sec. 12-2202. Equivalent Residential Units (ERU).

Wastewater charges will be established based on Equivalent Residential Units (ERU). One ERU is defined as a unit of wastewater volume of 240 gallons per day with a theoretical waste strength of 300 mg/l of BOD, 200 mg/l of TSS, and 50 mg/L O&G. The assignment of ERUs will be made by the City. Commercial properties will have multiple units as identified by the City Administrator or his/her agent.

- A. Users may appeal the number of ERUs assigned to a particular connection by installing and maintaining, at their own expense, water meters of a type approved by the City. Such meters shall be equipped with remote registering recorders located at an accessible site on the owner's⁴⁴² property.
- B. The City may, at its discretion require non-residential users to install water meters for the purpose of determining wastewater volume. The City may require residential connections to install water or wastewater meters within the HVSTSA as part of a comprehensive program to install meters. When so required, such meters shall be of a type approved by the City and equipped with remote registering recorders, and located at an accessible site on the owner's property.

Sec. 12-2203. Annual User Charge Rates.

At the beginning of each calendar year, the city will update its user charge rates as part of the city Fee Schedule approval.

Sec. 12-2204. Records.

In accordance with Federal and State requirements, the City Administrator will be responsible for maintaining all records necessary to document with the Wastewater Service Charge System adopted.

Secs. 12-2205-12-2210. Reserved.

Subdivision II. Determination of Charges.

Sec. 12-2211. Recovery of Costs.

It is the intent of this Ordinance that the wastewater service charges shall cover the costs of operating and maintaining the wastewater systems, and that costs are recovered from all users in a proportionate manner. The City shall maintain a proper system of accounts suitable for determining the operation and maintenance and equipment replacement costs of the collection and treatment facilities. These costs shall be reviewed at regular annual intervals. The City shall determine whether or not sufficient revenue is being generated for the effective operation and maintenance and management of the wastewater system, and that user charges are being distributed proportionately to all users. Any inequities and/or shortages shall be corrected by adjusting the rates accordingly by resolution of the City.

Sec. 12-2212. Fees and Payments.

All users of the wastewater treatment facilities shall be charged for sewer service based on the number of equivalent residential units assigned. Payment shall be rendered in full within 30 days of the billing date.

Sec. 12-2213. Reserved.

Sec. 12-2214. Septic Tank Effluent Pumping Surcharge.

An additional fee shall be charged to users of the community sewage treatment system who, for whatever reason, require septic tank pumping more frequently than once in two years. The surcharge for such frequent pumping shall

⁴⁴² Ord 02-2009, 4/21/2009

be at the same rate, either per tank or per gallon, as established by contract for the routine pumping of each septic tank on the community sewage treatment system.

Sec. 12-2215. Fees for Unusual Wastes.

If a user discharges wastes of unusual strength or character to the treatment facilities which cause or increase the operation and maintenance costs, he/she shall be ordered either to install pretreatment facilities or pay for the extra costs of treating the wastes. This decision will be made by the City, prior to the time the user begins to discharge extra strength wastes.

Sec. 12-2216. Toxic or Incompatible Waste Clean-Up.

Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the costs of restoring wastewater treatment services, clean-up and restoration of ground and surface water and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

Sec. 12-2217. Establishment of Special Accounts.

The City hereby establishes a Wastewater Service Fund into which all revenue collected from users will be deposited for disbursements into the general operating fund and the replacement fund. For the purpose of community and cost accounting records, this fund is designated as an income account. Revenue sufficient to insure adequate replacement shall be held in the replacement fund separate from the operation and maintenance fund proportionately to each fund.

Secs. 12-2218 – 12-2225. Reserved.

Subdivision III. Administration. ⁴⁴³

Sec. 12-2226. Applicability of Wastewater Service Charge System.

This Ordinance shall apply and be in effect for the stated purposes within the Historic Village Sewage Treatment service area in the City of Afton.

Sec. 12-2227. Enforcement.

- A. The City Administrator shall be responsible for administration and enforcement of this Ordinance.
- B. The City Administrator or his/her agent shall be qualified and certified by the MPCA as competent in the design, evaluation and inspection of the following sewage treatment systems as overseen or regulated by the City:
 - a. Large Subsurface/Sewage Treatment Systems, and shall carry a current Large Subsurface/Sewage Treatment System certificate and a current class C operators certificate.
 - b. Individual on-site sewage treatment systems, and shall carry a current Individual Sewage Certificate and a current Class D Operations Certificate.
 - c. Community Sewage Treatment Systems.

Sec. 12-2228. Appeals and Variances.

- A. The City shall hear and decide appeals and review any order, decision or determination made by the City Administrator regarding the enforcement of this Subdivision.
- B. The Board of Adjustment & Appeals shall hear and act upon all rate adjustment and variance requests.
- C. Any appeal of an administrative decision or determination may be filed by any person, department, bureau, town, city, county, or state which is aggrieved by a decision.

⁴⁴³ Ord 04-2015, 9/15/2015

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Secs. 12-2229 – 12-2235. Reserved

Subdivision IV. Failure to Make Payment. ⁴⁴⁴

Sec. 12-2236. Violations and Penalties.

Any bill not paid four (4) weeks after date of billing shall be declared delinquent and a past-due notice shall be issued to the billed party. The past-due notice shall contain an additional charge to cover the costs of the rebilling. Additional delinquent notices including their respective charges shall be sent at eight (8) and twelve (12) weeks after the billing date. Should a bill still be delinquent after one hundred twenty (120) days, the City may elect to take the following actions.

- A. Whenever wastewater service charge bills become delinquent, the amount due shall be certified to the County Auditor for inclusion with the following year's tax statement.
- B. Lien. Whenever wastewater treatment bills become delinquent the same shall become and constitute a lien upon the real estate to which sewer service is supplied. Statements rendered for such charge shall be deemed notice to all parties, whether or not the person charged with the statement is the property served. The claim for lien shall be made in the⁴⁴⁵ form of a sworn statement setting forth:
 - 1. a description of the real estate, sufficient for the identification thereof, upon or for which the sewage service was supplied;
 - 2. the amount of money due for such sewage service; and
 - 3. the date or dates when such amount or amounts became delinquent. If all amounts shown due remain unpaid after recording as provided by state statutes, the City may foreclose the lien in the same manner and with the same effect as the foreclosing of mortgages on real estate.
- C. Civil Action. In the alternative of levying a lien, the City may, at its discretion, file suit in a civil action to collect such amounts as are delinquent and due against the occupant or user of the real estate and shall collect, as well, all attorney's fees incurred by the City in filing the civil action. Such attorney's fees shall be fixed by order of the court.

Sec. 12-2237. Interest on Unpaid Balances.

In addition to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being served by the treatment works shall be liable for interest upon all unpaid balances at the rate set forth in the City's Fee Schedule..

Sec. 12-2238. Permit Revocation and Service Disconnection.

The City reserves the right to revoke discharge permits and to disconnect service to any user whenever wastewater treatment becomes unacceptable or negatively impacts the LSTS.

Sec. 12-2239. Effective Date.

This Ordinance takes effect upon passage and publication.

Sec. 12-2240 – 12-2300. Reserved.

ARTICLE X. MINING ⁴⁴⁶

⁴⁴⁴ Ord 04-2015, 9/15/2015

⁴⁴⁵ Ord 02-2009, 4/21/2009

⁴⁴⁶ **Cross references** – Mining, § 12-214; grading and filling near shorelands, § 12-407; interference with public land, § 20-31 et seq.

DIVISION 1. GENERALLY

Sec. 12-2301. Purpose.

For the health, welfare, safety, and optimum land development, it is necessary to regulate the removal of sand, gravel, rock, soil and other natural deposits in the county. Other purposes include the following:

- A. To provide for the economical availability of sand, gravel, rock, soil, and other materials vital to the continued growth of the community.
- B. To establish reasonable and uniform limitations, safeguards, and controls in the community, for the future production of sand, gravel, rock, soil, and other natural resources.
- C. To control noise, dust, hazards, effect on adjacent property, and other factors related to the active mining or excavating operation.
- D. To provide for control of the extent of excavation compatible with the surroundings; and for the restoration of the mining area after termination of the removal operation to make the site compatible with the surroundings.
- E. To control pollution by erosion or sedimentation.

Sec. 12-2302. Definitions.⁴⁴⁷

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:

Annual Mining Permit: The annual mining permit issued pursuant to this article by the City. Such annual mining permit shall be in addition to the Conditional Use Permit for the land covering the expected life of the mine as required in the zoning ordinance, article II of this chapter.

Mining shall include the excavation, removal or storage of sand, gravel, rock, soil, clay and other natural deposits within the City. Mining shall not include the excavation, removal or storage of rock, sand, dirt, gravel, clay or other material for the purpose of the foundation, cellar or basement of some pending structure, for which a permit has been issued and which is to be erected immediately following the excavation, removal or storage. Mining shall not include the removal or moving of materials for construction of roads, sewer lines, storm sewers, water mains, surface water drainage, agriculture or conservation purposes and sod removal. Nor shall mining include the moving of dirt for landscaping purposes on a lot used or to be used for residential purposes.

Sec. 12-2303. Nuisance abatement.⁴⁴⁸

- A. Where unsafe conditions or conditions in violation of this article or the permit exist, said conditions are hereby declared to be a nuisance, and the Council may give notice to the operator or owner to abate the same.
- B. If after a reasonable time for repair of the condition, it still exists, the Council may abate the nuisance and the costs of such work may be taxed against the property and become a lien thereon.

Sec. 12-2304. Existing codes.⁴⁴⁹

The provisions of the model mining regulation code adopted in this article are in addition to and not in replacement of the provisions of the zoning ordinance being article II of this chapter. Any provisions of the zoning ordinance relating to mining shall remain in full force and effect except as they may be contrary to the provisions of the model mining regulation code.

⁴⁴⁷ **Cross reference**--Definitions generally, § 1-2.

⁴⁴⁸ **Cross reference**--Nuisances generally, § 10-26 et seq.

⁴⁴⁹ Code 1982, § 601.103

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Sec. 12-2305. Violation, penalties.

Any person who violates any of the provisions of these regulations shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment in accordance with Section 1-13.

Secs. 12-2306--12-2320. Reserved.

DIVISION 2. PERMIT

Sec. 12-2321. Required.

- A. It shall be unlawful for any person, partnership, company, or corporation to engage in mining within the City or for an owner to allow a person to mine on his property, without first having obtained an annual mining permit from the Council. Prior to commencing mining operations or following one year of inactivity of any existing mining operations, a new or amended annual mining permit shall be obtained from the Council. It is recognized that mining is a land use permitted in the City in those areas zoned as industrial districts, but then only by Conditional Use Permit. It is also understood that the annual mining permit as provided in this article is in addition to the Conditional Use Permit required for the land covering the expected use of the mine and as provided in article II of this chapter.
- B. Persons conducting operations governed by this article and for which this article requires a permit may continue such operations, but within 60 days of the effective date of the ordinance from which this article derives shall make application for a permit, and failure to do so shall be a violation of this article; however, on request and for cause, the Council may extend the time for the initial application to 90 days. If application is not made within the required time, all mining operations shall be terminated.
- C. The annual permit shall be issued only after a public hearing following ten days posted and published notice and notification of adjoining landowners and after final approval by the Council. Any issued permit shall be posted by the applicant at the excavation site.
- D. A permit, when issued, shall be valid for one year unless terminated pursuant to Section 12-2322.

Sec. 12-2322. Termination.

- A. The Council may terminate a mining permit for violation of this article or a condition of the permit, or for other cause.
- B. To terminate a permit, the Council shall give notice of the violation or other cause for the termination along with an order that the condition be remedied. If the condition has not been repaired within a reasonable time, and not less than two weeks, the Council shall hold a hearing to determine whether the permit should be terminated.
- C. No mining shall take place after the permit is terminated pursuant to this section.

Sec. 12-2323. Application.

- A. The application for the permit required in Section 12-2321 shall be filed with the clerk for presentation to the Council. The currently required fee shall accompany each application. Application for renewal permit must be made 45 days prior to the termination of the previous permit. The application shall be made in the name of the operator of the mine and the owner of the land to be mined.
- B. The application shall contain:
 - 1. The name and address of the operator and owner of the land.
 - 2. The correct legal description of the property where the mining shall occur.
 - 3. Names of adjacent landowners including all those within a one-half mile radius.
 - 4. A map of the property where the mining is to occur that clearly indicates the property lines and the limits of the proposed excavation. Topographic data, including contours at vertical intervals of not more than

five feet except where the horizontal contour interval is 100 feet or more, a two-foot vertical interval shall be shown on this map. Watercourses, marshes, wooded areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown. U.S.G.S. datum shall be used for all topographic mapping where feasible.

5. The purpose of the removal, storage or excavation.
6. The estimated time required to complete the removal, storage, or excavation.
7. The plan of operation, including soil processing (any operation other than direct mining and removal), soil stockpiling nature of the processing and equipment, location of the plant, source of water, disposal of water, and reuse of water.
8. The travel routes to and from the site.
9. The plans for drainage, water and wind erosion control, sedimentation and dust control; these plans shall be in conformity with the recommendations of the county soil and water conservation district office.
10. A map or plat of the proposed pit or excavation showing the confines or limits thereof together with the proposed finished elevations based on 1929 sea level datum readings. Where the finished elevations prohibit natural drainage out of the site, certified soil borings shall be included through the proposed excavation.
11. A comprehensive plan showing that suitable provision will be made for the restoration and reuse of the excavated area so that it will not become a health or safety hazard or a nuisance, such plan to include anticipated final elevations, slope and a plan for the return of subsoil and topsoil, sufficient to support the interim and long term uses. Where the Council deems it practical and necessary, such plan shall include adjoining related areas where excavations have previously been made and remain under the control of the owner of the land on which the excavating is to be done or under the control of the person other than the owner to whom the permit is to be issued.
12. The applicant shall illustrate a staged activity or mining plan and shall illustrate how each stage or section will be restored or reused prior to beginning excavation or mining of the next stage of mining operations.

Sec. 12-2324. Operating and land rehabilitation practices.

The applicant shall abide by one of the two following operating and land rehabilitation practices:

- A. Excavations resulting in the accumulation of substantial water areas after rehabilitation must meet the following requirements:
 1. The water depth must not be less than three feet measured from the low water mark.
 2. All banks shall be sloped to the water line at a slope which shall not be steeper than four feet horizontal to one foot vertical.
 3. All banks shall be sodded, seeded with erosion retardant seed mixtures and mulches or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least six inches.
 4. Such topsoil as required by Subsection (A)(3) of this section shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible; and as recommended by the soil conservation plan.
 5. Slopes on boundary areas shall not be steeper than four feet horizontal to one foot vertical. No slope shall begin closer than 50 feet to any property line.
 6. Maximum depth of the excavation may be requested by the Council.
- B. Excavations not resulting in water areas after rehabilitation but which must be graded or backfilled, shall meet the following requirements:
 1. Such grading or backfilling shall be made with nonnoxious, nonflammable, noncombustible solids which will not cause leaching problems into groundwater systems.
 2. The graded or backfilled area shall not collect or permit stagnant water to remain therein.
 3. The peaks and depressions of the area shall be reduced to a gently rolling topography of less than a five to one slope in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall.
 4. Such graded or backfilled area shall be sodded, seeded with erosion retardant seed mixtures and mulches or surfaced with soil of a quality at least equal to the topsoil of land areas immediately surrounding, and to a depth of at least 12 inches.

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5. Such topsoil as required by Subsection (B)(4) shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible, consistent with the recommendations of the soil conservation service.
6. New slopes on boundary areas shall not be steeper than four feet horizontal to one foot vertical. No slope or bank shall begin closer than 50 feet to the property line.
7. The maximum depth of excavation may be regulated by the Council.

Sec. 12-2325. Operating conditions.

As a condition of the permit issuing, the Council shall require the applicant or the owner of the premises to comply with the following:

- A. *Fencing.* Properly fence any pit or excavation.
 1. Where collections of water are 1 1/2 feet or more in depth; all access to such collections of water may be ordered barred by appropriate means.
 2. Where excavation slopes steeper than one foot vertical to 1 1/2 feet horizontal exists for a period of five working days, access to such slopes may be ordered barred by appropriate means.
- B. *Slope of excavation.* Slope the banks, and otherwise properly guard and keep any pit or excavation in such condition as not to be dangerous because of sliding or caving banks.
- C. *Setbacks.* Refrain from mining below grade closer than 30 feet to the boundary of any zone where such operations are not permitted, or closer than 50 feet to the boundary of an adjoining property line, unless the written consent of the owner in fee of such property is first secured in writing and filed with the City Clerk. Refrain from excavating below road grade closer than 50 feet to the right-of-way line of any existing or platted street, road, or highway, except that excavating may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or proposed street grades.
- D. *Inspection fee.* An annual inspection fee to cover the cost of periodic inspection shall be paid to the City. The method of determining the inspection fee shall follow one of the two schedules as outlined below. The schedule to be followed shall be designated by the Council at the time the annual permit is approved. The minimum annual inspection fee shall be \$100.00.
 1. *Schedule A.* The annual inspection fee shall be based on the actual and estimated costs which are incurred by the City in providing periodic inspections and administering the provision of the annual permit. These costs may include both actual cost incurred by the City such as charges made by an engineering firm or for legal services and indirect, internal, actual and computed costs incurred by the City such as mileage or computed charges for time spent by city officials or their staff. The Council shall estimate these charges at the time the annual permit is issued and the applicant shall make a cash deposit with the City equal to their estimate when the annual permit is issued. If at the expiration date of the annual permit there are any funds still available they will be refunded to the applicant or if the cost exceeds the estimate the applicant shall pay the additional cost.
 2. *Schedule B.* The annual inspection fee shall be based on the amount of material which is removed from the site. The charge shall be fixed at the rate of one cent per cubic yard of material removed with a maximum fee of \$3,000.00. The Council, based on the estimates of the applicant, shall estimate the annual inspection fee which shall be paid by the applicant according to a payment schedule as determined by the Council. The applicant shall keep records of all material removed from the site and these records shall be made available to the Council for their review. On the expiration date of the annual permit the applicant shall submit to the Council a complete record of all material removed for that year and pay any additional inspection fees as determined by the Council, based on the fixed rate as set forth in this schedule.
- E. *Survey.* Furnish a survey by a registered surveyor showing the boundaries of the property.
- F. *Bond.* Post a bond, cash deposits or other security, in such form and sum as the Council may require, running to the City, conditioned to pay the City the cost and expense of repairing any highways, street, or other public ways and the restoration of other sites within the City made necessary by the special burden resulting from hauling and transporting thereon by the applicant in the removal of rock, sand, dirt, gravel, clay or other

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material, and conditioned further to comply with all the requirements of this article and the particular permit, and to save the City free and harmless from any and all suits or claims for damage resulting from the negligent excavation, removal or storage of rock, sand, dirt, gravel, clay or other material within the City boundary. Post a bond for 125 percent of the cost of restoring the mined-out area, including but not limited to soil, seed, sod and completed end use. Each mined-out area must be restored before excavation operations may begin on the next segment or section.

- G. *Insurance.* Carry bodily injury and property damage, public liability insurance in the amount of \$100,000.00 for any one person and \$300,000.00 for any occurrence including blasting insurance naming the City as an additional insured.
- H. *Noise.* Maintain and operate all equipment in such manner as to eliminate, as far as is practicable, noises and vibrations, in accordance with state and county standards.
- I. *Hours of operation.* Conduct operations only between the hours of 7:00 a.m. and 5:30 p.m., except no trucking shall be allowed on Saturdays, Sundays, or holidays. In the case of public emergencies such as floods or whenever any reasonable or necessary repairs to equipment are required the Council may allow an exception to this requirement.
- J. *Dust and dirt.* Construct, maintain and operate all equipment in such a manner as to minimize dust conditions. All operations shall meet the standards of the state pollution control agency.
- K. *Appearance.* Maintain buildings and plants in a safe condition in accordance with acceptable industrial practice. Weeds shall be controlled.
- L. *Removal of structures.* Within a period of three months after the termination of a sand and gravel operation, or within three months after abandonment of such operation for a period of six months (or within three months after expiration of a sand and gravel permit), dismantle or remove buildings, structures and plants incidental to such operation; except that such buildings, structures and plants need not be dismantled and removed so long as they are legally being used for the production or processing of sand and gravel or for some other purpose permitted in the zone in which they are located.
- M. *Lighting.* Set forth the planned lighting of the area and any other equipment or structures that will be installed or built.
- N. *Sewer.* Provide for adequate drainage to sanitary sewer and storm sewer including lift stations, if necessary.
- O. *Added provisions.* Comply with such other requirements as the Council from time to time may find necessary for the health, safety, welfare and prevention of nuisance in the area.
- P. *Variance.* The standards which apply to these permits may be varied by the Council according to the structure and size of the operation, and to factors presented by the applicant.

Secs. 12-2326--12-2350. Reserved.

ARTICLE XI. PERSONAL WIRELESS COMMUNICATIONS ANTENNAS AND TOWERS.⁴⁵⁰

Section 12-2351. Intent and Purpose.

In order to accommodate the communication needs of residents and business while protecting the public health and general welfare of the City, the Council finds that the regulations set forth in this article are necessary in order to establish predictable and balanced regulations for the siting and screening of personal wireless communications equipment while protecting the public against any adverse impacts on the City's aesthetic and environmental resources and the public welfare. Goals in adopting this article are as follows:

⁴⁵⁰ Ord 04-2009, 5/19/2009

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- A. Accommodate the desire of residents, travelers and businesses to have high quality telecommunications technology without endangering public health, safety and welfare.
- B. Minimize the adverse visual effects of personal wireless communications service facilities through careful design and siting standards, recognizing that local governmental units must look beyond their own communities to protect the views of adjoining communities as well. Minimize the adverse environmental effects of personal wireless communications facilities through careful design and siting standards.
- C. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.

Sec. 12-2352. Definitions.

- A. *City. Co-location.* The placement of wireless communication antennas by two or more service providers on a single tower, building or structure.
- B. *Personal Wireless Communications Facility.* A facility for the provision of wireless communications services, as defined by the Telecommunications Act of 1996.
- C. *Power Transmission Line.* Electrical lines designed for the bulk transfers of electrical power at or greater than 230kV.
- D. *Tower.* A monopole structure in excess of 35 feet in height intended primarily for the purpose of mounting an antenna or to serve as an antenna. Any structure intended for the same purpose but not built as a monopole is not considered an acceptable tower under these provisions.
- E. *Wireless Communication Facility.* Hardware that provides wireless communication services including antennas, towers and all associated equipment.

Sec. 12-2353. Permit and Location Requirements.⁴⁵¹

- A. A Wireless Communication Facility (other than for sending and receiving amateur radio signals) shall only be allowed:
 - 1. Within the Industrial I) zoning district,
 - 2. As a co-location on an existing tower,
 - 3. On an existing structure as long as the tower is not more than 10-feet higher than the structure at the point where it is attached, or
 - 4. Within the easement of an existing power transmission line, as long as the tower is not more than 20-feet higher than the power transmission line at the point where it is attached.
- B. A building permit shall be required for all towers and antennas that are subject to inspection by the Building Official to determine compliance with the Building Code.
- C. No person shall erect a tower, antennas or accessory structures without obtaining a Conditional Use Permit, except as provided for in this section. Procedures for obtaining a Conditional Use Permit is as outlined in Section 12-799 except that notification shall be to all property owners within 1,500 feet from all property lines and each governmental unit in Minnesota and Wisconsin from which the tower is likely to be visible.
- D. In reviewing an application for a Conditional Use Permit for the construction and maintenance of antennas, towers and accessory structures, the City Council shall consider the advice and recommendations of the Planning Commission, City Staff and all reviewing authorities as well as its conformance with:
 - 1. The Comprehensive Plan and this ordinance;
 - 2. Applicable state or federal law; and additionally,
 - 3. The effect of the proposed tower upon the health, safety, convenience and general welfare of occupants of surrounding land and the effects on property values in surrounding areas.

⁴⁵¹ Ord 11-2005, 7/19/2005

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- E. The City Council may impose reasonable restrictions or conditions on a conditional use permit for a tower to achieve the goals of this chapter. Such conditions may include, but are not limited to:
 - 1. Requiring co-location of proposed antennae on existing towers or structures when feasible;
 - 2. Requiring construction practices to ensure that the installation and maintenance of the tower will not create a safety hazard or damage to the property or other persons;
 - 3. Requiring protections against unauthorized climbing to be constructed and maintained;
 - 4. Requiring plans and/or financial securities necessary to ensure that the tower, if discontinued from use or abandoned, is removed in an appropriate and timely manner;
 - 5. Requiring techniques to minimize the visual impact of the proposed tower, once constructed;
 - 6. Prohibiting the placement of signs, lights or other illuminating devices on the tower, except when required by local, state or federal law or regulation.
 - 7. Required inspections at regular intervals to ensure compliance with all requirements.
 - 8. Requiring design standards to protect the migratory patterns of birds or other wildlife.
- F. The use of any existing tower which becomes non-conforming as a result of this ordinance may be continued. If the tower needs replacement, a new Conditional Use Permit is required.
- G. A Conditional Use Permit shall be required for the addition of a new antenna on an existing mount.
- H. Exceptions: Permitting is not required for:
 - 1. Adjustment, repair or replacement of the elements of an antenna array affixed to a tower or antenna provided that the replacement does not reduce any safety factor, remains consistent with previously approved permits and is consistent with this Code.
 - 2. Antennas and/or towers erected temporarily for test purposes or for emergency communications. No temporary cell sites are permitted except in the case of equipment failure, equipment testing or in the case of an emergency situation as authorized by the Sheriff. Use of temporary mobile cell sites for testing purposes shall be limited to the twenty-four (24) hours; use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of thirty (30) days. These limits can be extended by the City for good cause shown.
 - 3. Facilities, located in any zone, erected for sending and receiving amateur radio (also known as “ham radio”) signals.

Sec. 12-2354. Permit Application Requirements for Conditional Use Permits for New and Modified Towers and Administrative Permits for Additional Antennas on Existing Mounts.

A. General Filing Requirements

- 1. Name, address and telephone number of applicant and co-applicant as well as any agents of either.
- 2. Co-applicants include the landowner, licensed carrier(s) and tenants.
- 3. Original signatures of an officer of each applicant and co-applicant.

B. Location Filing Requirements

- 1. Street address of proposed antenna location.
- 2. Tax map and parcel number of proposed antenna location.
- 3. Zoning district designation of proposed antenna location.

C. Site Filing Requirements

- 1. A certified survey that includes the following:
- 2. Property lines for the subject property.
- 3. Property lines of all properties adjacent to the subject property within 100 feet.
- 4. Proposed location of antenna, mount and equipment shelter(s).
- 5. Location of all roads, public and private, on the subject property and on all adjacent properties within 1,500 feet including driveways proposed to serve the wireless communication service facilities.

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6. Distances at grade from the proposed wireless communication service facilities to each building on the vicinity plan.
7. All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
8. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelter(s), cable runs, parking areas and any other construction or development attendant to the proposed wireless communication service facilities.

D. Sight lines and photographs as described below:

1. A sight line representation depicting on a map the area(s) from which the top of the wireless communication service facilities would be visible.
2. Existing (before condition) photographs. Photographs taken from the periphery of the site (north, south, east and west).
3. Proposed (after condition). Each of the existing condition photographs shall have the proposed wireless communication service facilities superimposed on it to show what will be seen after construction.

E. Siting elevations, or views at-grade from the north, south, east and west for a 50-foot radius around the proposed wireless communication service facilities. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

1. Antennas, mounts and equipment shelter(s), with total elevation dimensions.
2. Security barrier. If the security barrier will block views of wireless communication service facilities, the barrier drawing shall be cut away to show the view behind the barrier.
3. Any and all structures on the subject property.
4. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
5. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours.

F. Design Filing Requirements

Equipment brochures for the proposed wireless communication service facilities such as:

1. Manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
2. Materials of the proposed wireless communication service facilities specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
3. Colors of the proposed wireless communication facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables and security barrier, if any.
4. Dimensions of the proposed wireless communication service facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
5. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.

G. Within 30 days of filing an application for a Conditional Use Permit for a tower, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed wireless communications service facility. The date, time and location of such test shall be:

1. Advertised in the newspaper of general circulation serving the City and,
2. Sent by return receipt mail to the same governmental units determined in Section 12.2353, subpart c, and to the owners of the parcels of property within one mile of the proposed site at least 14 days, but not more than 21 days prior to the test.
3. If lighting of the site is proposed, the applicant shall submit an engineer's computer-generated point-to-point printout indicating the horizontal foot-candle levels at grade within the property to be developed

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and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

H. Noise Filing Requirements

1. The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed wireless communication service facilities for the following:
 - a. Existing or ambient noise.
 - b. Existing plus proposed wireless communication service facilities: maximum estimate of noise from the proposed wireless communication service facilities plus the existing noise environment.
 - c. Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards of this ordinance.

I. Radiofrequency Radiation (RFR) Filing Requirements

1. The applicant shall submit to the City verification that they are operating within the parameters of the FCC requirements for RFR limits.
2. The applicant shall forward all correspondence with the FCC for the City files.

J. Insurance and Licensing Filing Requirements

1. A copy of each applicant's and tenant's FCC licenses. If the applicant is not an FCC licensee, submit a copy of the executed leases from each FCC licensee proposing to locate wireless facilities at the site.
2. A Certificate of Insurance demonstrating that the applicant has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.
3. A copy of an executed lease requiring that the applicant to remove all above-ground wireless telecommunication facilities no later than ninety (90) days after the cessation of operations.
4. A copy of an executed standard facility maintenance/removal agreement.
5. Evidence that the FCC has reviewed and approved the application for National Environmental Policy Act of 1969.

Sec. 12-2355. Conditional Use Permits.

In addition to the submittal requirements required elsewhere in this ordinance, applications for Conditional Use Permits for new towers and antennas shall be accompanied by the following information:

A. A report from a qualified and licensed professional engineer which:

1. Describes the tower height and design including a cross section and elevation;
2. Certifies the tower's compliance with structural and electrical standards; describes the tower's capacity, including the potential number and type of antennas that it can accommodate;
3. Specifies the distance to any DNR protected lake or river, the St. Croix River, any scenic road, and any boundary of a park.

B. Each application shall include a five-year facility plan. The City will maintain an inventory of all existing and proposed wireless communication service facilities and all carriers shall provide the following information in each five-year plan. The plan must be updated with each submittal:

1. Written description of type of consumer services each company/carrier will provide to its customers over the next five years (Cellular, Personal Communication Services, Specialized Mobile Radio, Paging Private Radio or other anticipated communications technology).
2. List of all existing sites, existing sites to be upgraded or replaced, and proposed cell sites within the City for these services by the applicant and each co-applicant.
3. Provide a presentation size map of the City, which shows the five-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.

C. Information provided as part of the five-year facility plan that is a trade secret pursuant to MN Statute 13.37 shall be classified as non-public data.

Secs. 12-2356 – 12-2370. Reserved.⁴⁵²

ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS.⁴⁵³

Sec. 12-2371. Scope.

This article applies to Preservation and Land Conservation Developments (PLCD) in the Agricultural (AG) zoning district.

Sec. 12-2372. General provisions.

A PLCD is a tract of land that is developed as a unit under single or unified ownership or controls. A Preservation and Land Conservation Development may be allowed in the AG zoning district to preserve prime agricultural land, woodland, wildlife habitat, vistas, groundwater recharge areas, areas with sensitive soils or geological limitations and areas identified in the Comprehensive Plan. Uses not otherwise allowed in the zoning district are prohibited within a planned development unless specifically permitted by provisions of this ordinance.

Sec. 12-2373. Purpose.

The purposes of this article are:

- A. To permit subdivisions in the Agricultural Zoning District which require the construction of a new public street.
- B. To encourage a more creative and efficient development of land and its improvements through the preservation of agricultural land, natural features and amenities than is possible under the more restrictive application of zoning requirements, while at the same time, meeting the standards and purposes of the comprehensive plan and preserving the health, safety, and welfare of the citizens of the City.
- C. To preserve open space, to preserve the natural resources of the site and to preserve wildlife habitat and corridors.
- D. To facilitate the economical provision of streets and public utilities.
- E. To allow the transfer of development rights (density) within a subdivision in order to preserve agricultural land, open space, natural features and amenities.

Sec. 12-2374. Permitted uses.

The Permitted Uses are:

- A. Those uses that are permitted in the underlying zoning district;
- B. Subdivisions that require the construction of a new public street in the AG zoning district;

Sec. 12-2375. General standards for approval.

- A. A Conditional Use Permit shall be required for all preservation and land conservation developments. The City may approve the preservation and land conservation development only if it finds that the development satisfies all of the following standards:
 - 1. The preservation and land conservation development is consistent with the comprehensive plan of the City.

⁴⁵² Ord. 97-55, 6/18/02, Ord 04-2009, 5/19/2009

⁴⁵³ Ord 06-2008, 4/15/2008; Ord 02-2014, 5/20/2014

2. The preservation and land conservation development is an effective and unified treatment of the development possibilities on the project site and the development plan provides for the preservation of unique natural amenities.
 3. The preservation and land conservation development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
- B. The tract is a minimum of eighty (80) contiguous acres in size and that all of the following conditions exist:
1. The proposal better adapts itself to the physical and aesthetic setting of the site and with the surrounding land uses than could be developed using strict standards and land uses allowed within the underlying zoning district.
 2. The proposal would benefit the area surrounding the project to a greater degree than development allowed within the underlying zoning district.
 3. The proposal would provide land use and/or site design flexibility while enhancing site or building aesthetics to achieve an overall higher quality of development than would otherwise occur in the underlying zoning district.
 4. The proposal would ensure the concentration of open space into more workable or usable areas and would preserve the natural resources of the site more effectively than would otherwise occur in the underlying zoning district.
- C. At least fifty (50) percent of the total tract is preserved as an undeveloped parcel.

Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.⁴⁵⁴

- A. The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district.
- B. The maximum length of cul-de-sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PLCD.

Sec. 12-2377. Coordination with subdivision regulations.

- A. It is the intent of this article that subdivision review under Chapter 12 be carried out simultaneously with the review of a planned development under this article.
- B. The plans required under this article must be submitted in a form that will satisfy the requirements of Chapter 12 for the preliminary and final plats.
- C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

Sec. 12-2378. Pre-application meeting.

Prior to the submission of any plan to the Planning Commission, the potential applicant is encouraged to meet with the City Administrator to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for an Administrative Permit and a preliminary plat. The potential applicant may submit a simple sketch plan at this stage for informal review and discussion. The potential applicant is urged to seek the advice and assistance of the City staff to facilitate the informal review of the simple sketch plan. The pre-application meeting process is entirely optional for the potential applicant and does not constitute an application within the meaning of this section.

Sec. 12-2379. General development plan.

- A. An applicant shall make an application for an Administrative Permit following the procedural steps as set forth in Section 12-78.
- B. In addition to the criteria and standards set forth in Sec. 12-78 of this article for the granting of Administrative Permits, the following additional findings shall be made before the approval of the outline development plan:

⁴⁵⁴ Ord 02-2014, 5/20/2014

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1. The proposed PLCD is in conformance with the comprehensive plan.
 2. The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to potential surrounding uses.
 3. Each phase of the proposed development, as it is proposed to be completed, is of sufficient size, composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit, and that provision and construction of dwelling units and common open space are balanced and coordinated.
 4. The PLCD will not create an excessive burden on parks, schools, streets, and other public facilities and utilities that serve or are proposed to serve the district.
 5. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- C. The following exhibits shall be submitted to the City Administrator by the proposed developer as a part of the application for a Administrative Permit:
1. An explanation of the character of the proposed preservation and land conservation development and the manner in which it has been planned to take advantage of the preservation and land conservation development regulations.
 2. A statement of the present ownership of all the land included within the proposed preservation and land conservation development and a list of property owners within five hundred (500) feet of the outer boundaries of the property.
 3. A general indication of the expected schedule of development including progressive phasing and time schedule.
 4. A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street rights-of-way, utilities, buildings and use for the property and for the area five hundred (500) feet beyond.
 5. Natural features maps or maps of the property and area five hundred (500) feet beyond showing contour lines at no more than two-foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions.
 6. A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.
 7. Full description as to how all necessary governmental services will be provided to the development.
 8. An engineering report presenting results of percolation tests and soil analysis of the site.
 9. Any additional information requested by the City Administrator, Planning Commission and City Council that might be required for clarification of the proposed project.
 10. Twenty-five (25) copies of all required information shall be submitted.
- D. The applicant shall also submit a preliminary plat and all the necessary documentation as required under Chapter 12 for all or that portion of the project to be platted. For purposes of administrative simplification, the public hearings required for the Administrative Permit and preliminary plat may be combined into one (1) hearing or may be held concurrently.

Sec. 12-2380. Final development plan.

- A. Within ninety (90) days following the approval of the general development plan with recommended modifications, if any, and the preliminary plat, the applicant shall file with the City Administrator a final development plan containing in final form the information required in the general development plan plus any changes recommended by the Planning Commission and the City Council as a result of the public hearing. The applicant shall also submit a final plat for that entire portion to be platted.
- B. The City Administrator shall submit the final development plan and the final plat to the Planning Commission for review.
- C. The final development plan and the final plat shall conform to the general development plan and preliminary plat plus any recommended changes by the Planning Commission or City Council to the general development plan and preliminary plat.

- D. The City Council shall review the final development plan and final plat. If the final development plan is approved by the City Council, the City Administrator shall issue a Conditional Use Permit to the applicant.
- E. The applicant(s) shall grant a Conservation Easement which shall run with the land in perpetuity to the City of Afton, all of the owners of the lots and parcels to be created in the PLCD, all land owners of property within Afton abutting the PLCD and the Minnesota Land Trust (or similar independent third party approved by the City of Afton), which restricts the lots and parcels, as well as the development rights on the undeveloped parcel(s), within the PLCD to the number of dwelling units approved for the PLCD and the land cover and use approved by the City of Afton as a part of this PLCD. If neither Minnesota Land Trust nor any comparable organization will accept the Conservation Easement the City of Afton, in its sole discretion, may upon a specific finding that no conservation organization will accept a Conservation Easement, waive such requirement. In the case of such waiver, the applicant(s) shall be required to extend the grant of a Conservation Easement to the owners of property that abuts all abutting property to the PLCD.

Sec. 12-2381. Enforcement of development schedule.

The construction and provisions of all of the common open spaces and public and recreational facilities that are shown on the final development plan must proceed at the same phase as the construction of dwelling units. At least once every six (6) months following the approval of the final development plan, the City Administrator shall review all of the building permits issued for the planned development and examine the construction which has taken place on the site. If he shall find that the rate of construction of dwelling units is greater than the rate at which common open space and public and recreational facilities have been constructed and provided, he shall forward this information to the City Council, which may revoke the PLCD permit.

Sec. 12-2382. Conveyance and maintenance of undeveloped parcel.

- A. All land shown on the final development plan as an undeveloped parcel must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The undeveloped parcel must be conveyed to the homeowners association or similar organization subject to covenants to be approved by the City Council which restrict the undeveloped parcel to the uses specified on the final development plan and which provide for the maintenance of the undeveloped parcel in a manner which assures its continuing use for its intended purpose.
- B. If a homeowners association is created, the applicant shall submit plans at the time of final plan of development and documents which explain:
 - 1. Ownership and membership requirements.
 - 2. Articles of incorporation and bylaws.
 - 3. Time at which the developer turns the association over to the homeowners.
 - 4. Specific listing of items owned in common including such items as roads, recreation facilities, parking, common open space grounds, and utilities.

Sec. 12-2383. Standards for undeveloped parcel.

No open area may be approved as common undeveloped parcel under the provisions of this article unless it meets the following standards:

- A. The location, shape, size, and character of the undeveloped parcel must be suitable for the planned development.
- B. The undeveloped parcel must be used for amenity or recreational purposes. The uses authorized for the undeveloped parcel must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- C. The undeveloped parcel must be suitably improved for its intended use but common space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the undeveloped parcel must be appropriate to the uses which are authorized for the

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undeveloped parcel and must conserve and enhance the amenities of the undeveloped parcel having regard to its topography and unimproved condition.

Sec. 12-2384. Review and amendments.

- A. The City Administrator shall review all PLCDs within the City at least once each year and shall make a report to the City Council on the status of the development in each of the PLCD districts. If the City Administrator finds that the development has not commenced within one (1) year after the original approval of the conditional use for the PLCD, the City Administrator may recommend that the City Council revoke the Administrative Permit as set forth in Section 12-78 of this chapter. Prior to cancellation or revocation of this permit, the City Council shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- B. For additional phases of the PLCD, if within two (2) years of completion of the prior phase, the project has not progressed, the City Administrator may recommend that the City Council determine what action will be taken with the remainder of the project. Prior to determining the outcome of the PLCD, the Planning Commission shall hold a public hearing at which time all interested parties will be given an opportunity to be heard.
- C. Minor changes in the location, placement, and heights of the buildings or structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.
- D. Approval of the Planning Commission and City Council shall be required for other changes such as rearrangement of lots, blocks and building tracts. Those changes shall be consistent with the purpose and intent of the approved final development plan.
- E. Any amendment to the PLCD shall require the same procedures as for the application for an Administrative Permit as set forth in this chapter.
- F. This Ordinance shall be in full force and effect from the date of the publication of this Ordinance.

Chapter 14

OFFENSES AND MISCELLANEOUS PROVISIONS*

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***State law reference** – Crimes and offenses, M.S.A. § 609.01 et seq.

ARTICLE I. IN GENERAL

Sec. 14-1. Use, discharge of weapons.

Within the city, it shall be unlawful for any person to discharge out of doors upon the land of another, including all land owned by the City, any firearm, such firearm to include rifle, shotgun, pistol, or device capable of propelling metal pellets by air, spring, CO2, or other means, without having in his possession, written permission from the owner or tenant of such land to discharge such firearm thereon.

(Code 1982, § 707.101)

(Ord 1997-48, 1/15/02)

(Ord 04-2016, 4/19/16)

State law references—Authority to regulate discharge of firearms, M.S.A. § 471.633 and M.S.A. Hunting Restrictions and Requirements, § 97B.

Sec. 14-2. Curfew for minors.

(a) No minor under the age of 16 years shall loiter, idle or be in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement, entertainment, or refreshment, vacant lots or other unsupervised places between the hours of 10:00 p.m. and 5:00 a.m., of the following day; provided, however, that this section shall not apply to such minor when accompanied by his parent, guardian or other person having the care and custody of the minor or when the minor is upon some necessary errand by permission or direction of his parents, guardian or other adult person having the care and custody of the minor. Such permission shall be in writing and signed by such parent, guardian or other adult person having the care and custody of the minor.

(b) No parent, guardian or other adult person having the care and custody of a minor under the age of 16 years of age shall permit such minor to loiter, idle or be in or upon the public streets, highways, roads, alley, parks, playgrounds or other public grounds, public places and public buildings, places of amusement, entertainment or refreshment, vacant lots or other unsupervised places between the hours of 10:00 p.m. and 5:00 a.m. of the following day; provided however, that this that this section shall not apply to such minor when accompanied by his parent, guardian or other person having the care and custody of the minor or When the minor is upon some necessary errand by permission or direction of his parents, guardian or other adult person having the care and custody of the minor. or when the minor is upon some necessary errand by permission or direction of his parents, guardian or other adult person having the care and custody of the minor.

(Code 1982, § 708)

(c) No person operating or in charge of any place of amusement, entertainment or refreshment shall permit any minor under the age of 16 years of age to remain in such place during the hours prohibited by subsection (a) of this section; provided, however, that the provisions of this that this section shall not apply to such minor when accompanied by his parent, guardian or other person having the care and custody of the minor or when the minor is upon some necessary errand by permission or direction of his parents, guardian or other adult person having the care and custody of the minor.

(Code 1982, § 708)

ARTICLE II. FALSE ALARMS AND UNAUTHORIZED BURNS

Sec. 14-3. Purpose.

The purpose of this ordinance is to encourage security, fire or medical alarm users and alarm businesses (including, but not limited to, sales, installation, and/or monitoring) to maintain the operational reliability and the proper use of alarm systems so as to limit unnecessary police, fire and emergency medical responses to false alarms and alarm malfunctions.

This ordinance governs burglary, robbery, intrusion, fire, and medical emergency false alarms, provides for service fees for excessive false alarms, and unauthorized burns, and provides for assessing such service fees to the property taxes in lieu of issuance of citations.

OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 14-4. Definitions.

Alarm Site: A single premise or location, or a multi-tenant location, served by an alarm system or systems.

Alarm System: Any mechanical, electrical, or radio controlled device or system which is designed to emit, transmit or relay a signal or message and which, when activated, is intended to summon, or that would reasonably be expected to summon, police, fire or emergency medical services. Alarm systems does not include:

- (1) An alarm installed on a vehicle, unless the vehicle is permanently located at a site, or;
- (2) An alarm designed to alert only the inhabitants of a premise, and which does not constitute a local alarm.

False Alarm: The activation of an alarm system signal or message which elicits notification to and or response by the Washington County Sheriff's Office and/or Lower St. Croix Valley Fire District when there is no evidence of a crime, fire, medical emergency or other activity which warrants a call for immediate police, fire fighting or emergency medical assistance. This may include, but is not limited to, an alarm discovered by a police or firefighter before notification of an alarm from a monitor or from a local alarm system that is not monitored and unauthorized burns.

Fire or Emergency Medical Alarm: A system or portion of a combination system consisting of components and circuits arranged to monitor and annunciate the status of fire or medical emergency or supervisory signal initiating devices which are intended to summon fire or emergency medical services of the Washington County Sheriff's Office and/or Lower St. Croix Valley Fire District.

Intrusion Alarm: A robbery, burglary, panic or other alarm intended to summon the police, which is designed either to be initiated purposely by a person or by an alarm system that responds to a stimulus characteristic of unauthorized intrusion.

Local Alarm: An alarm system that emits a signal at an alarm site that is audible or visible from the exterior of the structure.

Recreational Fire: A fire that is less than three feet high and three feet wide and burning logs not less than three inches in diameter. A recreational fire is not intended for disposal of brush. Recreational fires do not require a permit.

Unauthorized Burn: Burning in excess of a recreational fire without a permit.

Warning Notice: A notification to the owner or person in charge of an alarm site by the Washington County Sheriff's Office and/or Lower St. Croix Valley Fire District for false alarms due to system malfunction or when no reason can be determined for the false alarm. The warning notice will require that the alarm system be inspected and or serviced within five working days with written documentation submitted to the Sheriff's Office and/or Lower St. Croix Valley Fire District that the system is in working order.

Sec. 14-5. Intrusion Alarm Systems.

(a) Each time the Washington County Sheriff's Office responds to a false intrusion alarm due to system malfunction or when no reason can be determined for such false alarm, the Washington County Sheriff's Office shall issue a false alarm warning notice.

(b) A service fee for excessive false intrusion alarms shall be charged as follows:

- (1) No service fee shall be charged for the first three alarms occurring within a twelve month period, calculated from the date of the first such alarm.
- (2) Each false alarm in excess of three and up to and including six within a twelve month shall result in a service fee of \$50.00 per false alarm.
- (3) Each false alarm in excess of six within a twelve month period shall result in a service fee of \$100.00 per false alarm.

(c) No service fee shall be assessed if the false alarm is:

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- (1) Caused by an electrical storm, tornado, or other act of God where there is clear evidence of physical damage to the alarm system.
- (2) Caused by the intermittent disruption of telephone circuits beyond the control of the alarm site owner.
- (3) Caused by electrical power disruption or failure in excess of two hours beyond the control of the alarm site owner.
- (4) At a location where the Washington County Sheriff's Office has installed the Varda or other similar alarms.

(d) All false alarm service fees are due and payable within thirty days from the date of invoice. In the event that false alarm service fees are not paid as required by this ordinance, the fees will be assessed to the property taxes.

(e) A person commits an offense in violation of this ordinance if such person suffers or permits false alarms in excess of three within a twelve month period, with each subsequent false alarm constituting a separate violation.

Sec. 14-6. Fire or Emergency Medical Alarm Systems.

(a) Each time the Lower St. Croix Valley Fire District responds to a false alarm due to system malfunction or when no reason can be determined for such false alarm, the Lower St. Croix Valley Fire District shall issue a warning notice.

(b) A service fee for excessive false alarms shall be charged as follows:

- (1) No service fee shall be charged for the first three false alarms occurring within a twelve month period, calculated from the date of the first such alarm.
- (2) Each false alarm in excess of three and up to and including six within a twelve month period shall result in a service fee of \$50.00 per false alarm.
- (3) Each false alarm in excess of six within a twelve month period shall result in a service fee of \$100.00 per false alarm.

(c) No service fee shall be assessed if the false alarm is:

- (1) Caused by an electrical storm, tornado or other act of God where there is clear evidence of physical damage to the alarm system.
- (2) Caused by the intermittent disruption of telephone circuits beyond the control of the alarm site owner.
- (3) Caused by electrical power disruption or failure in excess of two hours beyond the control of the alarm site owner.

(d) All false alarm service fees are due and payable within thirty days from the date of invoice. In the event that false alarm service fees are not paid as required by this ordinance, the fees will be assessed to the property taxes.

(e) A person commits an offense in violation of this ordinance if such person suffers or permits false alarms in excess of three within a twelve month period, with each subsequent false alarm constituting a separate violation.

Sec. 14-7. Unauthorized Burns.

(a) Each time the Lower St. Croix Valley Fire Protection District responds to an unauthorized burn, the District shall charge the person(s) conducting the unauthorized burn a service fee.

(b) The amount of the service fee for unauthorized burns shall be set annually by the District in adopting its fee schedule.

(c) All unauthorized burn service fees are due and payable within thirty days from the date of invoice. In the event that the unauthorized burn service fee is not paid as required by this ordinance, the fees will be assessed to the property taxes.

(Ord. 1997-11, 8/18/98)

Chapter 16

PARKS AND RECREATION*

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***Cross references** –park fee dedication in subdivisions, § 12-1270; operation of motor vehicles on bicycle and hiking trails, § 22-32.

State law reference – Authority to establish, maintain and manage parks, M.S.A. § 412.491.

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PARKS AND RECREATION

ARTICLE I. IN GENERAL

Sec. 16-1. 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:

Body-gripping device includes, but is not limited to, any snare (neck, body, or leg), kill type trap (Conibear), leg hold trap (steel-jaw, padded, and offset), and any other device designed to grip a body or body part. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps shall not be considered body-gripping devices.

(Ord 08-2013, § 16.1, 8/20/2013)

Park means any land or water area and all facilities thereon devoted to recreational use or proclaimed to be park property, including all city access roads adjacent thereto.

Weapons means any device from which shot or a projectile of any type can be discharged by means of an explosive gas or compressed air, or otherwise propelled, including, but not limited to firearms, bows, arrows, slings, and spring guns.

(Code 1982, § 1301.101)

Cross reference--Definitions generally, § 1-2; Use, Possession of Weapons, § 14-1.

Sec. 16-2. Enforcement.

Compliance with this chapter shall be enforced by the county sheriff's department or other police authority on behalf of the city.

(Code 1982, § 1301.109)

(Ord 08-2013, § 16.1 – 16-2, 8/20/2013)

ARTICLE II. CITY PARKS

Sec. 16-3. General conduct in city parks.

It shall be unlawful for any person to do any of the following within a city park:

1. Deposit, scatter, drop or abandon any bottles, cans, glass, sewage, waste, or other debris or refuse except in receptacles provided for such purposes.
2. Shoot or discharge any weapon, fireworks, or explosives, or to possess any weapon, fireworks, or explosives.
3. Dig trenches or make any other excavations.
4. Ride a horse, except in designated areas.

(Code 1982, § 1301.108)

Sec. 16-4. Defacing or destroying property prohibited.

No person shall deface, destroy, diminish or impair the value of public or private property located within any public park in the city, including buildings, structures, or trees, shrubs or vegetation located thereon or growing therein.

(Code 1982, § 1301.102)

Sec. 16-5. Parking and driving of vehicles.

No person shall drive a motorized vehicle in a public park other than on public roads within such park. No person shall park a motorized vehicle in a public park in an area not specifically posted with signs permitting parking of motorized vehicles nor in an area posted with signs prohibiting such parking.

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(Code 1982, § 1301.103)

Cross reference--Traffic and vehicles, Ch. 22.

Sec. 16-6. Speed of vehicles.

No person shall drive or operate a motorized vehicle at a speed in excess of 15 miles per hour in any park unless legally signed for a higher speed.

(Code 1982, § 1301.104)

Cross reference--Traffic and vehicles, Ch. 22.

Sec. 16-7. Open fire prohibited.

No person shall build a fire in any place in any park except in fireplaces or receptacles provided for the building of fires or in an area specifically posted with signs permitting the building of an open fire not in a fireplace or receptacle.

(Code 1982, § 1301.105)

Cross reference--Open burning prohibited, § 12-1856.

Sec. 16-8. Swimming or wading in certain areas prohibited.

No person shall wade or swim in an area in which signs have been posted prohibiting swimming or wading. In all areas wherein swimming and wading is permitted, the city council shall have the authority by resolution to prohibit the use of such equipment as they deem dangerous to persons engaged in swimming or wading, and to prohibit such activities or conduct as they deem dangerous or hazardous to those engaging in it or to other persons in a park. When a sign has been posted prohibiting the use of such equipment or engagement in such activities or conduct as may be specified therein, no person shall use such equipment or engage in such activities or conduct.

(Code 1982, § 1301.106)

Sec. 16-9. Hours.

All public parks shall be closed from sunset until 6:00 a.m.

(Code 1982, § 1301.107)

(Ord 08-2013, § 16-3 – 16-9, 8/20/2013)

ARTICLE III. TRAPPING

Sec. 16-10. Intent.

It is the intent of the City of Afton to protect public health and safety, and animal welfare by prohibiting the use of body-gripping devices on all public lands on all public rights-of-way. The ordinance is necessary to preserve wild animals and prevent the un-selective catching, maiming of wild animals including birds, endangered and threatened species, and companion animals, as well as injury to children and adults that come into contact with these devices.

Sec. 16.11. Permit Required.

No trapping that may otherwise be permitted by law within the boundaries of the City of Afton may occur without the issuance of a trapping permit from the City.

A permit will be granted for trapping only if the applicant submits an application form provided by the City which describes the approximate location of any traps to be placed within the City, as well as the type and make of trap and the type of animal which is intended to be trapped. Any information so obtained shall be public data.

Sec. 16-12. Prohibitions.

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- A. It shall be unlawful for any person to set or use, or attempt to set or use, a body- gripping device of any kind designed or intended to take hold of, capture or kill any animal within any City of Afton parks, public lands held in conservation easements, or in any public rights-of-way.
- B. It shall be unlawful for the owner, possessor, or any other person in control of a lot, tract, or parcel of land within Afton city limits or any residence or business premises situated thereon to knowingly permit the use of a body-gripping device upon the property, residence or premises by anyone other than the owner without that person or persons first obtaining a trapping permit from the City of Afton.
- C. Trapping of any kind shall be prohibited in all City of Afton Public Parks unless under the direct authorization of the City Administrator.

Sec. 16-13. Exemptions.

- A. The provisions of this act shall not prohibit federal, state, county, or municipal government employees or their duly authorized agents from using a Conibear trap in water, padded-jaw leghold trap, or non-strangling type foot snare where use of such device is the only method available to protect human health and safety.
- B. The provisions of this act shall not prohibit federal or state employees or their duly authorized agents from using a Conibear trap in water, padded-jaw leghold trap, or non-strangling type foot snare where use of such device is the only means of protecting threatened and endangered species, as listed under the Federal and State Endangered Species Act.

Sec. 16-14. Impounding of Body-Gripping Devices.

Whenever a body-gripping device is used contrary to the prohibitions outlined in this Act within the confines of any City of Afton Park, lands held in conservation easements within the city limits, or in any public rights-of-way; or traps of any kind are used within any City of Afton parkland, the same may be impounded by any duly authorized police officer or by any State Fish & Game Warden until judicial action occurs.

Sec. 16-15. Violations and Penalties.

Any violation of the provisions of this article or failure to comply with any of its requirements shall be administered according to Section 1-13 of the Afton City Code.

SOLID WASTE MANAGEMENT*

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***Cross references** – Junk vehicles, § 22-171 et seq.

State law reference – Waste management, M.S.A. Ch. 115A; authority to regulate the collection and disposal of garbage and other refuse, M.S.A. § 412.221, subd. 22; authority to assess for garbage collection and disposal, M.S.A. § 443.015.

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SOLID WASTE MANAGEMENT

ARTICLE I. IN GENERAL

Secs. 18-1--18-30. Reserved.

ARTICLE II. COLLECTION*

Sec. 18-31. Purpose.

The purpose of this article is to protect the public health, safety and welfare of the residents of the city by licensing and regulating the operation of solid waste collection services within the city, which licensing and regulation the city council hereby determines to be necessary to ensure the regular collection and transportation of solid waste and to eliminate the dispersal of solid waste along the streets and other areas in or near the city and to eliminate other and similar health and safety hazards which the council finds now exist or are to be anticipated in the absence of such licensing and regulation.
(Code 1982, § 501.102)

Sec. 18-32. 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:

Collection point means any residence, place of business or other place in the city with respect to which a hauler has been hired for the purpose of collecting and transporting solid waste therefrom.

Hauler means any person engaged in the business of solid waste collection.

Solid waste means garbage, rubbish, refuse, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, except animal waste used as fertilizer. "Solid waste" does not include earthen fill, boulders, rock, and other materials normally handled in construction operations, nor any materials which are recyclable and which are separated from mixed municipal solid waste by the generator, separately collected, and delivered for reuse in their original form or for use in a manufacturing process pursuant to a contract between the city and a recycling company.

Solid waste collection means the gathering of solid waste from public or private places for disposal at an approved site.

Solid waste collection service means a private operation engaged in solid waste collection and solid waste transportation.

Solid waste transportation means the conveyance of solid waste from one place to another, by means of vehicle, rail car, water vessel, conveyor or other means.
(Code 1982, § 501.101)

Cross reference--Definitions generally, § 1-2.

Sec. 18-33. License required.

No person shall engage in the business of solid waste collection within the city without first having obtained a license from the city council. Such license may be issued by the council for a period of up to five years under the conditions prescribed by this article and any conditions imposed by the council in the licensing agreement, and upon payment of currently required annual license fee during the term of the license.
(Code 1982, § 501.103)

***Cross reference**—Businesses, Ch. 8.

State law references—Licensing of solid waste collection, M.S.A. §§ 115A.93—115A.9302; cities required to have compulsory collection of solid waste, M.S.A. § 115.941.

Sec. 18-34. Exceptions.

Where upon written application of the responsible person or persons, the city council finds that by reason of exceptional circumstances strict conformity with any provisions of the regulations contained herein would cause undue hardship, would be unreasonable or impractical under the circumstances, the city council may permit a variance from these regulations upon such conditions and within such time limitations as it may prescribe, and as may be permitted by other laws and regulations.
(Code 1982, § 501.105)

Sec. 18-35. Regulations.

All collection and removal of solid waste within the city shall be performed in accordance with the following regulations:

- (1) *Responsibility for collection.* The owner and occupant of any premises, business establishment or industry shall be responsible for the satisfactory collection and transportation of all solid waste accumulated at a premises, business establishment or industry. The owner or occupant shall have a contract for waste collection services with a hauler licensed by the city, unless the owner or occupant obtains an exemption from the city council and ensures that an environmentally sound alternative is used.

In order to obtain a variance or exemption from the requirements of this subsection, the owner or occupant of any premises, business establishment or industry must provide a written application to the city council. The owner or occupant must certify in writing to the city council that the owner or occupant will ensure that an environmentally sound alternative to contract collection services is used.

- (2) *Frequency of collections.* All garbage and all other solid waste shall be collected and removed from each collection point at least once a week on a date to be established by the hauler.
- (3) *Storage of solid waste.* The owner and occupant of any premises, business establishment or industry shall be responsible for the satisfactory storage of all solid waste accumulated at that premises, business establishment or industry.
- (4) *Storage of containers.* Except on days scheduled for collection, containers shall be stored out of view of the public street or road.
- (5) *Effect of failure to pay fees.* Notwithstanding any provision of this article to the contrary, no hauler need collect or remove the solid waste from any collection point if the customer for whom it is being collected is in default of any payment or payments required to be paid for such service under the contract or agreement existing between the hauler and such customer.
- (6) *Collection and removal fees.* No hauler shall charge a fee for the collection and removal of solid waste within the city in an amount greater than that set out in a schedule of rates which shall be adopted by the city council by resolution from time to time. In the case of a multiple-family residential building, the fee for each unit within such building shall not exceed the amount permitted for service to any single family residential dwelling. In the case of commercial or other nonresidential buildings, the hauler may charge a fee to be established by agreement between him and the individual customer, provided such fee is reasonably related to the rate established hereunder for collection and removal of solid waste from residential buildings to the extent the collection and removal service required is comparable.
- (7) *Separation of leaves and grass clippings.* All leaves and grass clippings shall be separated by the homeowner from all other garbage and refuse accumulated on the premises and shall be composted on the premises or placed and maintained until removal by the licensed compost collection hauler in degradable bags, containers, or packages provided by the homeowners compost hauler. Degradables shall be defined as any untreated paper bags or biodegradable or photodegradable plastic bag acceptable to the composting station used by the licensed compost collection hauler.

(Code 1982, § 501.104; Res. No. 1995-1, 2-14-95)

Sec. 18-36. Enforcement and penalties.

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This article may be enforced under M.S.A. §§ 115.071 and 116.072. In addition, any individual or business who fails to comply with the provisions of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in section 1-13.
(Code 1982, § 501.106)

Secs. 18-37--18-60. Reserved.

ARTICLE III. RECYCLING

Sec. 18-61. 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:

Dwellings means those dwellings described in subsections (1) and (2) of the definition of premises in this section.

Premises means:

- (1) All dwellings now or hereafter located in the city; and
- (2) All buildings or parts of buildings now or hereafter owned by or leased to the city and located in the city, except, however, park shelter or park toilet buildings.

Recyclables means:

- (1) Newsprint.
- (2) Corrugated cardboard.
- (3) Mixed residential mail.
- (4) Boxboard.
- (5) Aluminum and bimetal beverage containers.
- (6) Brown, clear and green glass.
- (7) Batteries, auto and tractor only.
- (8) Food cans.
- (9) Plastic: All narrow neck bottles with screw-off type caps, type 1 through 5.
- (10) Magazines: Current periodicals (no catalogues, Readers' Digest).
- (11) Phone books.

Also included as a recyclable is any other material that the city may hereafter be required to collect as a recyclable by the county. For purposes of this article, recyclables shall not be refuse, rubbish or waste matter as defined in section 18-32.

Resident means every person who is an owner or occupant of a dwelling, the city as to the buildings or parts thereof described in subsection (2) of the definition of premises in this section.

(Res. No. 1996-1, § 502.102, 1-16-96)

Cross reference--Definitions generally, § 1-2.

Sec. 18-62. Purpose of article.

The purpose of this article is to require mandatory separation of recyclables to aid and promote collection thereof and disposal by means other than deposit in a sanitary landfill or by burning.

(Res. No. 1996-1, § 502.101, 1-16-96)

Sec. 18-63. Separation and storage of recyclables.

(a) Every resident of every premises shall separate the recyclables from their respective premises from all other refuse, garbage, rubbish and waste matter as defined in article II of this chapter and shall store the recyclables separately in containers designated as containers for the storage of recyclables.

(b) Containers for storage of recyclables shall be kept in the same location as is designated by article II of this chapter for refuse containers; however, residents of dwellings, no earlier than 12 hours prior to the day for scheduled collection of recyclables from their respective dwellings, shall place adjacent to the dwelling or garage accessory thereto and visible from the street in front of the dwelling, or from the alley by the dwelling if that dwelling has refuse collection service at the alley. After the scheduled collection, the containers for recyclables and any recyclables not collected shall be returned by the resident of the dwelling to the same location as containers for refuse are kept as designated by article II of this chapter.

(Res. No. 1996-1, § 502.103, 1-16-96)

Sec. 18-64. Collection of recyclables.

(a) Collection of recyclables from premises shall be by a hauler selected and duly licensed by the city. Also, such collection shall be done in compliance with all other applicable ordinances of the city now or hereafter in effect.

(b) The provisions of subsection (a) of this section notwithstanding, the city, at any time, and from time to time, may contract with a hauler for collection of recyclables from some or all premises, and if the city so contracts, the recyclables shall be collected from the premises covered by such contract by the collector under contract with the city and on terms and conditions set out in such contract.

(c) Neither the provisions of subsections (a) or (b) of this section or any other provisions of this article shall prevent any resident from disposing of that resident's recyclables without the use of a paid hauler or the city collector, but the provisions of section 18-65 shall be complied with by such resident.

(Res. No. 1996-1, § 502.104, 1-16-96)

Sec. 18-65. Disposal of recyclables.

Recyclables collected from premises shall not, in any event, be:

- (1) Deposited in any landfill;
- (2) Burned in any incinerator; or
- (3) Deposited or distributed in any way or manner which is contrary to the applicable law, statute, ordinance, rule or regulation.

Provided, however, the restrictions of subsections (1) and (2) of this section shall not apply to any recyclables which are deposited in a landfill or burned pursuant to specific prior written approval granted by the county and consented to, in writing, by the city. Residents shall take such action as is reasonable under the circumstances to determine that recyclables are not disposed of contrary to the provisions of this section.

(Res. No. 1996-1, § 502.105, 1-16-96)

Sec. 18-66. Reports to city.

(a) As and when requested by the city from time to time, the city shall require the haulers of their respective recyclables to keep complete and accurate records of the total tons of recyclables collected each month from their respective premises, together with the actual weight or percentage of the total that each recyclable material

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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.

(b) The city also shall prepare or require their 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 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.

(Res. No. 1996-1, § 502.106, 1-16-96)

Sec. 18-67. Penalty.

Any person violating this article shall be guilty of a petty misdemeanor and shall be punished, upon conviction, as provided in section 1-13.

(Res. No. 1996-1, § 502.108, 1-16-96)

Sec. 18-68. Controlling effect.

The provisions of this article shall control over any contrary or inconsistent provisions in article II of this chapter.

(Res. No. 1996-1, § 502.109, 1-16-96)

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ORDINANCE 4-2006 conflicts with Ord 1997-58 previously added as Article IV. Sec. 20-70 and 20.71.

Ord 4-2006 FITS BETTER & HAS BEEN MOVED TO CH. 22 TRAFFIC & VEHICLES

**Proposed Ord Amendment 09-2013 to move Golf Cart sections to Ch 22
10/14/13-ksl**

***Cross reference** – Any ordinance or resolution naming, establishing, locating, etc., any streets or public way in the city saved from repeal, § 1-9(5); driveway access permits and standards, § 12-84; placement and design of roads, driveways and parking areas in shorelands, § 12-408; street plan in subdivisions, § 12-1378; cul-de-sac streets in subdivisions, § 12-1379; street design in subdivisions, § 12-1380; private streets in subdivisions prohibited, § 12-1381; street names in subdivisions, § 12-1385; streets engineering standards in subdivisions, § 12-1426 et seq.; utilities, Ch. 24; use of streets by gas franchisee, § 24-103.

State law reference – Authority to regulate the use of streets, M.S.A. § 412.211; power of cities regarding streets, M.S.A. Ch. 440.

STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

DIVISION 1. SIDEWALKS

Sec. 20-1. Permit Required.

No person shall construct or repair any sidewalk on any street, avenue or other public property in the City without first obtaining a permit; provided, however, that no permit shall be required for any construction or repair made by the City.

Sec. 20-2. Application for Permit.

All applications for permits required by Sec. 20-1 shall be made on forms approved by the Council. All applications shall state:

1. The dates construction or repair will begin and be completed; and
2. A description of the contemplated construction or repair.

Sec. 20-3. Compliance with Specifications.

No person shall construct or repair any sidewalk in the City without fully complying with the plans and specifications prepared by the City and set forth in the permit issued under Sec. 20-1. Expenses incurred by the City in establishing grades, assisting and determining location, and preparing basic engineering plans and specifications may be paid in full or in part by the City or may be charged against the applicant, in which case said expenses shall be payable in full as a condition precedent to issuance of the permit.

Sec. 20-4. Duty of Owner.

The owner of any property within the City abutting on a public sidewalk shall keep the sidewalk in proper repair and safe for pedestrians at all times.

Sec. 20-5. Inspection of Sidewalks.

The City Engineer or designee shall periodically inspect the public sidewalks within the City to determine that they are kept in proper repair and safe for pedestrians. If a sidewalk abutting on private property is unsafe and in need of repairs, the City Engineer shall cause a notice to be served on the record owner of the property and the occupant either by registered or certified mail or by personal service. This notice shall order the owner to have the sidewalk repaired and made safe within thirty (30) days, unless the owner requests a 30 day extension, which the City Administrator may grant if there is no immediate threat to public safety, and shall state that if the owner fails to do so, the City Administrator or other official will do so on behalf of the City, and the expense thereof, if not paid by the owner, made a special assessment against the property concerned.

Sec. 20-6. Repair by City.

If a sidewalk is not repaired within thirty (30) days after service of the notice required in Sec. 20-5, the City Engineer or designee shall report such fact to the Council and the Council shall by resolution order repair of the sidewalk. The City Engineer shall keep a record of the total cost of the repair attributable to each lot or parcel of property and report such information to the Council.

Sec. 20-7. Supervision of Repairs.

The Council shall require inspection and supervision of all work done whether by order of the Council or pursuant to permits issued under Sec. 20-1. All work not done according to permit specifications shall be corrected or repaired at the owner's expense and all ongoing work shall be stopped by the inspector when discovered.

Sec. 20-8. Snow, Ice, Weeds, Grass and Rubbish Removal.

All snow, ice, dirt, weeds, grass or rubbish remaining on a public sidewalk more than twenty-four (24) hours after its deposit thereon is a public nuisance. The owner and the occupant of any property adjacent to a public sidewalk shall use due diligence to keep such walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt, weeds, grass or rubbish to remain on the sidewalk longer than twenty-four (24) hours after its deposit thereon.

Sec. 20-9. Removal of Snow, Ice, Weeds, Grass, and Rubbish by City.

When practicable, the City Administrator may cause to be removed from all public sidewalks all snow, ice, dirt, grass, weeds, or rubbish beginning twenty-four (24) hours after such matter has been deposited thereon or after the snow has ceased to fall. The City Administrator shall keep a record showing the cost of such removal adjacent to each separate lot and parcel and shall report such information to the Council.

Sec. 20-10. Removal or Pruning.

Trees, branches or shrubs overhanging any sidewalk right-of-way within the City shall be removed or pruned by the owner of the abutting property so that the branches provide a clear space of 8 feet above the surface of a sidewalk and provide for not less than an unobstructed sidewalk width of 4 feet. All dead or diseased trees, branches, or shrubs which are or may become a hazard to the use of the sidewalk right-of-way shall be removed by the owner of the abutting property.

Sec. 20-11. Removal or Pruning of Trees by City.

After sufficient notice to the owner, the City Administrator may cause to be removed or pruned from all sidewalk right-of-ways all branches to be removed or pruned under Sec. 20-14. The City Administrator shall keep a record showing the cost of such removal or pruning adjacent to each separate lot and parcel and shall report such information to the Council.

Sec. 20-12. Owner Liability for Cost.

- a) The owner of property on which, or adjacent to a sidewalk:
 - 1. to which a sidewalk has been constructed or repaired by the City; or,
 - 2. from which snow, ice, dirt, weeds, grass, or rubbish has been removed by the City; or,
 - 3. from which tree branches have been removed or pruned by the City,

shall be personally liable for the cost of such construction, repair, removal or pruning.

b) As soon as the service (repair, construction, removal, pruning, etc.) has been completed and the cost determined, the City Administrator shall prepare and mail a bill to the owner and thereupon the amount shall be immediately due and payable at the office of the City Administrator.

Sec. 20-13. Assessment of Costs.

On or before September 1 of each year, the City Administrator shall list the total unpaid charges against each separate lot or parcel to which they are attributable under Sec. 20-12. The Council may then spread the charges against the property benefited as a special assessment under Minnesota Statutes, Sec. 429.101, and other pertinent statutes, for certification to the County Auditor and collection in the following year along with current taxes.

Sec. 20-14. Penalties.

Any person who violates any provisions of this ordinance is guilty of a misdemeanor and upon conviction shall be punished in accordance with section 1-13.
(Ord. 1997-8, 3/17/98)

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DIVISION 2. STREET RECONSTRUCTION STANDARDS

Sec. 20-20. Conformity with City Street Reconstruction Standards.

City street reconstruction projects shall comply with the following design criteria.

Sec. 20-21. Street design.

- (a) Minimum widths. Minimum pavement widths (face-to-face of curb) for each type of public street or road shall be as follows:

<i>Type of Street</i>	<i>Roadway Width Including Shoulders*</i>
Minor Arterial	As determined by traffic needs
Collector/Commercial	44 feet
Industrial	44 feet
Local Street (Urban)	32 Feet, measured from face of curb to face of curb
Local Street (Rural)	24-foot wide pave surface with a 4-foot wide aggregate shoulder
Cul-de-sac	45-foot turnaround radius

* Actual pavement width may depart from the standard minimum pavement width to match width of the existing street pavement.

The type of street shall be as noted in the City's Comprehensive Plan. The type of road to be constructed, whether it be rural or urban, shall be based on the existing and proposed topography, impact on adjoining properties, drainage consideration, environmental concerns, traffic projections and other aspects of the area served. It is the city's intent to provide a roadway that both meets sound engineering principles and is consistent with the nature of the area to be served.

(b) Corner radii. Roadways of street intersections shall be rounded by a radius of not less than 25 feet. Roadways on alley-street intersections shall be rounded by a radius of not less than six feet. Corners at the entrances of the turnaround portions of the cul-de-sacs shall be rounded by a radius of not less than 15 feet.

(c) Curb and gutter. Curb and gutter may be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways for urban design.

Sec. 20-22. Alley design.

Minimum Widths. All alley pavement widths shall conform to the following minimum standards:

<i>Classification</i>	<i>Pavement</i>
Industrial or Commercial	20 feet
Residential (two-way)	20 feet
Residential (one-way)	6 feet

Sec. 20-23. Drainage.

A complete and adequate drainage system design shall be required for all City streets and may include a storm sewer system or a system of open ditches, culverts, pipes and catch basins, and ponding areas, or both systems.

Sec. 20-24. Pavement Design.

(a) Street pavement. The design of street pavement for all streets covered by this regulation shall be in accordance with the Minnesota Department of Transportation pavement design standards. The designed thickness of

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the surfacing elements shall be in accordance with the flexible pavement design standard for road classifications as shown below. However, a minimum of six inches of class 5 aggregate base and three inches of bituminous surfacing is required. This bituminous surfacing shall consist of 1½ inches of bituminous base course and 1½ inches of bituminous wear course. More stringent design may be required by the city engineer based on existing soil conditions. The final bituminous wear course shall be placed no sooner than one year after the date that the bituminous base course is placed.

<i>Classification</i>	<i>Pavement Design: Axle Load</i>
Arterials, Collector Street needs	As determined by traffic
Local Streets	7-ton minimum

(b) Soil tests. To determine subgrade soil classifications and existing pavement section thickness, soil samples shall be collected and analyzed by an independent, certified testing laboratory. Soil samples shall be taken along the center line of the proposed road at intervals not exceeding 300 feet.

(c) Curb and gutter. Concrete curb and gutter will be constructed on both sides of urban design streets. Where required, the construction of concrete curb and gutter shall be in accordance with state department of transportation 2531 and shall be either barrier or surmountable type curb. Bituminous curbs will not be allowed.

(d) Boulevards. All boulevards shall have a minimum of four inches of top soil (black dirt) placed on them and then be seeded or sodded.

(e) Aggregate shoulders. The aggregate shoulders constructed on rural design roadways shall consist of a four-foot wide section consisting of a minimum of two inches of class 2 aggregate.

Sec. 20-25. Construction plans and inspections.

(a) Construction plans for the required improvements conforming in all respects with the standards contained herein shall be prepared by the city engineer.

(b) All required improvements that are to be installed under the provisions of this regulation shall be inspected during the course of construction by the city engineer.

(Ord. 3-2008, 1/15/08)

Secs. 20-25. – 20-30. Reserved.

ARTICLE II. INTERFERENCE WITH PUBLIC LAND*

DIVISION 1. GENERALLY

Sec. 20-31. 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:

Administrator means the City Administrator.

Company means a natural or corporate person, business association or other business entity including partnerships and sole proprietorships, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks to, or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the City.

Facilities means communications lines or equipment of any kind, including but not limited to, lines or equipment for the transmission of audio, video or data, or other similar communications services, not otherwise governed by M.S.A. ch. 238, including all trunks, lines, cables, wires, optical fibers or other fiber optic cables, laser

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equipment, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, towers and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along any public ground.

Public ground means highways, roads, streets, alleys, sidewalks, skyways, public ways, utility easements and public easements in the City, parks, parking lots, cemeteries and trails.
(Res. No. 1995-9, § 804.101, 10-17-95)

Cross Reference – Definitions generally, § 1-2.

Sec. 20-32. Restoration and Relocation

(a) *Restoration.* Upon completion of the work contemplated by a permit as set forth in Division 2 of this Article, the company must restore the general use of the work, including the pavement and its foundation, to the same or better condition than existed prior to commencement of the work necessitating a permit. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material and restore the public ground to the same condition, the City may put it in the same condition at the expense of the company. The company must, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including but not limited to the City's administrative costs. To recover its costs, the City first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the city.

(b) *Company initiated relocation.* The company must give the city written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the city, such approval shall not be unreasonably withheld.

(c) *City required relocation.* The company must promptly, with due regard for seasonal working conditions, permanently relocate its facilities whenever the city's police power in grading, regrading, changing the location or shape of or otherwise improving public ground or constructing or reconstructing a public service or utility system therein, the relocation will be at the expense of the company. In other cases, the company and city may, by written agreement, apportion the costs or relocation between them. If such relocation is done without an agreement first being made as to who is to pay the relocation cost, the relocation of the facilities by the company is not to be construed as a waiver of its right to reimbursement for its relocation costs. If the company claims reimbursement for the relocation costs, it must notify the city within 30 days after receipt of the city's request for the costs.

(d) *Relocation where public ground vacated.* The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the city. If the vacation proceedings are initiated by the city, the city must pay the relocation costs. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by other persons, the company must pay the relocation costs unless otherwise agreed to by city, company and the other persons.
(Res. No. 1995-9, § 804.103, 10-17-95)

Sec. 20-33. Company default.

(a) *Notice.* If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than 30 days after receiving written notice from the city of the default, the city may terminate the rights of the company under the permit, subject to the city's absolute right to revoke at any time in the exercise of the city's police powers. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in the state or by certified mail to that address.

***Cross References** – Mining, § 12-2301 et seq.; utilities, Ch. 24.

State Law Reference – Authority to regulate dangerous excavations, M.S.A. § 471.92.

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(b) *City action on default.* If the company is in default in the performance of the work authorized by the permit, the city may, after the notice to the company in subsection (a) of this section and failure of the company to cure the default, take such action as may be reasonably necessary to abate the conditions caused by the default. The company must reimburse the city for the city's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under section 20-56 will be applied by the city first toward payment for such reimbursement.
(Res. No. 1995-9, § 804.104, 10-17-95)

Sec. 20-34. Other conditions of use.

(a) *Use of public ground.* Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel and use of public ground. The facilities are subject to additional conditions of the permit as established therein, including but not limited to:

- (1) The right of inspection by the city at reasonable times and places;
- (2) The obligation to relocate the facilities pursuant to subsections 20-32(c) and (d); and
- (3) Compliance with all applicable regulations imposed by the state public utilities commission and other state and federal law.

(b) *Location.* The facilities must be placed in a location and in such a manner as is designated by the city. The city may designate whether facilities shall be placed above ground or in subsurface conduits.

(c) *Emergency work.* A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In such event, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit.

(d) *Street improvements, paving or resurfacing.* The city will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain:

- (1) The nature and character of the improvements;
- (2) The streets upon which the improvements are to be made;
- (3) The extent of the improvements, the time when the city will start the work; and
- (4) If more than one street is involved, the sequence in which the work is to proceed.

(e) *Company protection of facilities.* A company must take all reasonable measures to prevent its facilities from causing damage to persons or property. A company must take all reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property or the elements. The company must take all reasonable protective measures when the city performs work near the facilities.

(f) *Guarding of obstructions or dangers.* If a company shall obstruct any public ground, such company shall keep such obstruction or obstructions properly guarded at all times. From sunset to sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in such a manner that they will give proper warning of the obstruction. The city may require any other restrictions or safety regulations as may be in the public interest.

(g) *Prior service connections.* In cases where streets are at final width and grade and the city has installed utilities and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the facilities are located under such street, a company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five-year period following the paving or resurfacing.

(Res. No. 1995-9, § 804.105, 10-17-95)

Secs. 20-35 -- 20-50. Reserved.

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DIVISION 2. PERMIT

Sec. 20-51. Required.

A company may not construct, install, repair, remove or relocate facilities, or any part thereof, or otherwise open or disrupt any public ground without first obtaining a permit from the city. The city shall require a separate permit of a company for each location where construction, installation or other disturbance of the public ground is to occur, or for each convenient subdivision of construction, installation or other related work for which the city determines in its sole discretion a permit is required. Each permit shall state specifically the locations of any facilities, and the nature of the work necessitating the permit, and shall contain reasonable regulations and conditions to protect the health, safety and welfare of the populace of the city.

(Res. No. 1995-9, § 804.102(01), 10-17-95)

Sec. 20-52. Application.

(a) Application for a permit is made to the administrator. A company shall apply for a permit or renewal of a permit a minimum of two weeks before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the city in the event of an emergency.

(b) Upon application by a company for a permit authorizing construction, installation, repair, removal or relocation of facilities, or other disturbance of public ground, the city may deny or approve such application. Denial of a permit shall be accompanied by a written statement of the reasons for denial. Denial of a permit shall be appealable to the city council which shall issue detailed findings in the event such denial is sustained. An appeal of denial shall be heard at the first regularly scheduled council meeting and any findings issued within 30 days of such meeting.

(Res. No. 1995-9, § 804.102(02), 10-17-95)

Sec. 20-53. Issuance.

If the administrator determines that the applicant has satisfied the requirements of this article, the administrator may issue a permit to the company.

(Res. No. 1995-9, § 804.102(03), 10-17-95)

Sec. 20-54. Fee.

(a) A company shall make a one-time permit fee payment for each permit requested in an amount determined by the city. The permit fee shall include an application fee for administrative costs, plus an additional amount to be computed according to the portion of public right-of-way being occupied, computed by length of area in 50-foot increments, and the duration of the permit. The city shall establish a table of permit fees, which shall be subject to approval by the city council and a copy of which shall be

(b) maintained in the office of the city clerk. The table of fees shall be amended annually and may be amended at other times as deemed necessary by the city.

(c) The permit fee shall be determined so as to fully reimburse the city for all costs incurred as a result of the construction, installation or other work approved by a permit, including but not limited to the costs incurred in returning the public ground to its original condition. Should the construction, installation or other work approved by the permit decrease the useful life or value of the public ground, or should the same not be returnable to its original condition, the city may recover such decreased value, damage, cost or fees from the permit fee.

(Res. No. 1995-9, § 804.102(04), 10-17-95)

Sec. 20-55. Term.

The maximum period allowed for a permit shall be three months. Construction, installation or other opening, disturbance or obstruction of public ground beyond the period covered by each permit will require obtaining a new

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permit with payment of applicable fees and application for such permit shall be subject to the same review as the original permit application.

(Res. No. 1995-9, § 804.102(05), 10-17-95)

Sec. 20-56. Security for completion of work.

Prior to commencement of work, the company must deposit with the city security in the form of certified check, letter of credit or construction bond, in a sufficient amount as determined by the administrator for the completion of the work. If more than three work projects are to be constructed during a calendar year, the applicant may, in lieu of individual securities, deposit \$2,000.00 with the city in a form satisfactory to the administrator. The securities will be held until the work is completed plus a period of two months thereafter to guarantee that restoration work has been satisfactorily completed. The security will then be returned to the company with interest if held for a sufficient length of time to be required by law and then interest at the applicable statutory rate.

(Res. No. 1995-9, § 804.102(06), 10-17-95)

Sec. 20-57. Inspection of work.

When the work is completed, the company must request an inspection by the administrator. The administrator will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

(Res. No. 1995-9, § 804.102(07), 10-17-95)

Sec. 20-58. Display.

Permits shall be available at all times for ease of inspection on the indicated worksite or at a site mutually agreed upon by the city and a company.

(Res. No. 1995-9, § 804.102(08), 10-17-95)

Sec. 20-59. Penalty for failure to secure permit.

Failure to secure the required permit prior to beginning construction, excavation, installation or work of any kind in public ground shall constitute a misdemeanor under this article, punishable upon conviction as provided in section 1-13.

(Res. No. 1995-9, § 804.102(09), 10-17-95)

Sec. 20-60. Reserved.

ARTICLE III. NUMBERING BUILDINGS*

Sec. 20-61. Purpose.

For the protection of citizens of the city and property owners, the city council finds that the drivers of emergency vehicles must be able to identify easily the homes and businesses they serve and to reach them as quickly as possible, and that in order to do so all principal structures within the city must have readable addresses visibly displayed.

(Code 1982, § 709.01)

Sec. 20-62. Numbers required.

It shall be the duty of the owner of every principal structure within the city to have the structure identified by reference to the Uniform Street Naming and Numbering System for Washington County, Minnesota.

(Code 1982, § 709.02)

Sec. 20-63. Means of display.

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(a) Numerals indicating the official numbers for each principal building or each front entrance to such building shall be mounted at least three feet above grade at the intersection of the entrance drive to the building with the named street, in such a manner as to be visible from both directions along the street. Numerals shall be displayed in metal, glass, plastic, or other durable material at least three inches in height, in a reflective contrasting color to the base.

(b) In the VHS district only, numbers may be affixed directly to the house or building if they are clearly visible from the street.

(Code 1982, § 709.03)

Sec. 20-64. Shared driveways.

Whenever two or more buildings are served by one driveway or a privately maintained road, the numbers for each building shall be displayed in such a manner as to identify each separate building, in addition to the numbers required at the intersection of the entrance drive and the named street. If the driveway or private road divides at any point, additional numbers shall be located at the fork to indicate which buildings are served by each branch of the driveway or road.

(Code 1982, § 709.04)

Sec. 20-65 - 20-69. Reserved.

ARTICLE IV. OFFICIAL MAP OF APPROVED PUBLIC STREETS

Sec. 20-70. Purpose.

To identify and record on an Official Map those streets that have been approved and accepted for maintenance by the City Council of the City of Afton.

Sec. 20-71. Official Map.

The location, name, length and level of improvement of every Public Street that has been approved and accepted by the City Council of the City of Afton shall be shown on the Official Map of Approved Streets published herewith and made a part of this article, such map designated as the “Official Map of Approved Public Streets” of the City of Afton and shall be maintained as provided herein by the City Administrator. All of the notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and are hereby made a part of this article by reference and incorporated herein as fully as if set forth herein at length.

(Ord 1997-58, § 20-65 – 20-71, 1/21/03)

(Ord 4-2006, § 20-70 -- 78. 5/16/2006; Ord 09-2013, 10/15/13)

***Cross reference**—Buildings and building regulations, § 12-1801 et seq.

State law reference—Authority to number the lots and blocks of the city, M.S.A. § 412.221, subd. 18.

Chapter 22

TRAFFIC AND VEHICLES*

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***Cross references** – Any ordinance establishing traffic or parking regulations on any street in the city saved from repeal, § 1-9(10); consumption in public places, § 4-35; traffic control design for zoning, § 12-198; parking and driving vehicles in parks, § 16-5; speed of vehicles in parks, § 16-6.

State law reference – Powers of local authorities regarding traffic, M.S.A. § 169.04; Special vehicle use on roadway, M.S. A. § 169.045.

TRAFFIC AND VEHICLES

ARTICLE I. IN GENERAL

Sec. 22-1. Generally.

All traffic regulations shall be followed pursuant to Minnesota State Statute Chapter 169. Nothing in this section should be construed to conflict with traffic regulations per state statute.

Secs. 22-2—22-30. Reserved.

(Ord 06-2012, § 22-1 -- 22-30, 08/21/2012)

ARTICLE II. OPERATION

Sec. 22-31. Unnecessary acceleration of motor vehicle.

No person shall start or accelerate any motor vehicle with an unnecessary exhibition of speed on any public or private way within the city limits. Prima facie evidence of such unnecessary exhibition of speed shall be the squealing or screeching sounds emitted by the tires or the throwing of sand or gravel by the tires of such vehicle, or both.

(Code 1982, § 705.101)

Sec. 22-32. Bicycle, hiking trails.

(a) It shall be unlawful to operate any motorized vehicle upon any public bicycle trail or public hiking trail within the limits of the city.

(b) The use of snowmobiles will be permitted on the public bicycle and hiking trail between November 1 of each year and April 1 of the next year inclusive, provided that the trail is snow covered. The period of time during which snowmobiles may be used on such trails may be increased or decreased by action of the city council published in the official newspaper of the city designating the inclusive dates when the use of snowmobiles shall be permitted on such trails.

(c) All provisions of the Highway Traffic Regulations Act, M.S.A. ch. 169, and all ordinances of the city, regulating traffic shall apply to the operation of bicycles on such trails.
(Code 1982, § 703)

Cross reference--Parks and recreation, Ch. 16.

Sec. 22-33. Self-Propelled Devices.

The city council may, by resolution, prohibit the operation of self propelled devices within areas of the city, provided that the resolution is recommended by the Sheriff and the city council finds that the prohibition is necessary to protect pedestrians, or to eliminate hazards.

Sec. 22-34. Purpose.

The purpose of this Section is to protect the public health and safety arising out of the use of skateboards, roller skates, rollerblades and roller skis within the City; to regulate the use thereof upon public streets and sidewalks; to prohibit the same from parking lots on commercially zoned land; and to provide penalties for violations. Nothing in this Section shall be construed to prohibit the use of a wheelchair or other wheeled devices designed to assist disabled persons on sidewalks or public or private parking lots.

Sec. 22-35. Definitions.

For the purposes of this Section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

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Self-propelled devices. The term "self-propelled device" means "a non-motorized platform, footboard, ski-like device, shoe, boot, or similar object mounted on wheels and designed and intended to propel the rider by human power or force or by gravity, including, but not limited to: skateboards, roller skis, scooters, roller skates and in-line skates. The definition does not include a wheel chair operated by a disabled person, bicycles, wagons or strollers."

Sec. 22-36. Prohibited Acts.

(a) No person may attach a rider of any self-propelled device to any motor vehicle upon a street or roadway in the City of Afton.

(b) No person in a motor vehicle may closely follow a skateboarder such that a safe distance is not maintained between the vehicle and the skateboarder.

(c) People using self-propelled devices may not obstruct any sidewalk, lane, alley, public ground, public landing, wharf or pier, or any other public place by placing any building materials, carriages, carts, boxes, lumber, firewood, posts or rails or any other materials or substances whatsoever to be used as ramps or guides for other skateboards or other self-propelled devices.

(d) People using self-propelled devices may not obstruct any public street in a manner that impedes traffic.

(e) No person may ride or propel a self-propelled device on any sidewalk, public street or public walkway within the City of Afton, in a manner that endangers or is likely to endanger other persons or property.

(f) Use of a self-propelled device is forbidden on the private property of another without the written permission of the owner. The document granting permission shall be available for presentation to law enforcement.

(g) All riders must slow to a speed that is reasonable for conditions of traffic, be able to stop if necessary and yield the right-of-way to any pedestrian upon any public way. Riders must yield to motor vehicles when crossing roadways.

(h) Operators or riders of self-propelled devices shall yield the right of way to other pedestrians using the City sidewalks and shall not otherwise endanger or interfere with pedestrian traffic on those sidewalks.

(i) Self-propelled devices may not be operated contrary to the statutory provisions applicable to the operation of bicycles.

(j) It shall be unlawful for any person to operate or ride a self-propelled device (skateboard, roller skates, roller skis, roller blades) in any of the following places:

(1) On any public property where signs prohibit such use.

Sec. 22-37. Violation and Penalty.

Violation of any provision of this Section shall be punishable as a misdemeanor according to Sec. 1-13 of this Code.

Sec. 22-38 – 22-55. Reserved.

(Ord 06-2012, § 22-33 through 22-55, 08/21/2012)

ARTICLE III. PARKING*

DIVISION 1. GENERALLY

Sec. 22-56. Definitions.

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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:

Motor vehicle means any self-propelled motor vehicle or other vehicle on wheels which would ordinarily travel on public streets.

Owner includes any person owning, renting or having charge of a motor vehicle.

Snow-removal period means a period of time of no more than 48 hours after each snowfall; except that such snow-removal period shall be deemed to have terminated on those streets on which snow has been removed if the removal has been completed in a period of time less than 48 hours.

Street means any street, avenue or other public way in the city.
(Code 1982, § 704.101)

***Cross reference--**Definitions generally, § 1-2.

Sec. 22-57. Obedience required.

The owner of any vehicle parked or left standing upon any street, within the corporate limits of the city shall conform to and observe the regulations set forth in this article.
(Code 1982, § 704.102(1))

Sec. 22-58. Maximum parking time.

No vehicle will be left standing or parked at the curb of any street or on any public place within the corporate limits of this city for more than 48 continuous hours.
(Code 1982, § 704.102(2))

Sec. 22-59. Parking during snow-removal period.

No person, except physicians or emergency calls or other emergency vehicles, shall park on any street in the city during a snow-removal period.
(Code 1982, § 704.102(3))

Sec. 22-60. Removal of vehicles in violation.

Whenever any police officer finds a vehicle standing upon the street or highway in violation of this article, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to remove the same, to a position off the street. If the owner or operator of such vehicle is not available to remove such vehicle, it shall be towed away from such parking place at the direction of the sheriff's department of the county and the owner of such vehicle, prior to having the same returned to him, shall pay the cost of the towing plus the cost of storage until claimed by owner. The payment of such sums shall be prerequisite for the return of the vehicle to the person entitled thereto.
(Code 1982, § 704.102(4))

Sec. 22-61. Liability for damages.

Any damage occasioned to any vehicle found in violation of this article by such towing operations or the storage of such vehicle thereafter, shall be assumed by the owner or operator hereof, and no liability for damage shall be assumed by the city.
(Code 1982, § 704.102)

Secs. 22-62--22-95. Reserved.

***Cross reference—**Parking, § 12-196.

State law references—Authority to regulate parking, M.S.A. § 169.04 (1).

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DIVISION 2. PRIVATELY OWNED PARKING LOTS AND AREAS

Sec. 22-96. Manner of driving generally.

All operation and driving of motor vehicles on privately owned parking lots and areas shall be done in a careful manner so that no sudden starting or erratic movement of such vehicle is deliberately engaged in by the driver. It shall be unlawful for any person to operate any motor vehicle upon such lot in any manner that would constitute careless driving if done on a public street. No person shall engage in any drag racing or exhibition driving on any such parking lot or area.

(Code 1982, § 706.101)

Sec. 22-97. Maximum speed.

No person shall operate a motor vehicle on any privately owned parking lot or area within the city at a speed greater than is safe and reasonable under the conditions of traffic then existing therein; and in no event shall any such vehicle be operated in excess of a speed of 15 miles per hour.

(Code 1982, § 706.101)

Sec. 22-98. Parking of vehicles.

Parking of vehicles on privately owned parking lots and areas shall conform to the markings of stalls or positions for parking which are designated on the surface of the parking area. No vehicle shall be parked or allowed to stand in any area of such parking lot which has been designated or is used as a lane for moving traffic so that such parking will interfere with the movement of traffic therein. No vehicle shall be parked for a continuous period longer than 24 hours in any parking lot or area.

(Code 1982, § 706.102)

Sec. 22-99. Notice of collision.

If any person who drives a motor vehicle upon such a parking lot or area becomes involved in a collision between the vehicle he is driving and any other vehicle or vehicles, parking upon such lot, such driver shall leave a notice upon each unattended vehicle with which he has collided, giving his name, address and license number. Failure on the part of any person to comply with this section shall constitute a violation of this article.

(Code 1982, § 706.103)

Secs. 22-100 -- 22-135. Reserved.

ARTICLE IV. SNOWMOBILES AND ALL TERRAIN VEHICLES*

Sec. 22-136. 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:

All terrain vehicle or ATV refers to trail bikes, minibikes, amphibious vehicles and similar devices other than snowmobiles used at least partially for travel on natural terrain but not "special mobile equipment" defined in M.S.A. § 168.011, subd. 22.

Natural terrain means areas other than roadways or driveways (private or public), parking lots and other areas that the surface of which has been intentionally modified for motor vehicle operation thereon.

Operate means to ride in or on and control the operation of a snowmobile or ATV.

Operator means every person who operates or is in actual physical control of a snowmobile or ATV.

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Owner means a person, other than a lienholder having the property in or title to snowmobile or ATV entitled to the use or possession thereof.

Right-of-way means the entire strip of land traversed by a highway or street in which the public owns the fee or an easement for roadway purposes.

Roadway means that portion of a highway improved, designed or ordinarily used for vehicular travel.

Snowmobile means a self-propelled vehicle designed for travel on snow, ice or natural terrain steering by skis, wheels or runners.

Street means a public thoroughfare, roadway, alley, or trail used for motor vehicular traffic which is not an interstate, truck, county state aid, or county highway.
(Code 1982, § 701.101)

Sec. 22-137. General restriction on ATVs.

Except as specifically permitted and authorized in this article, it is unlawful for any person to operate an ATV within the limits of the city on the right-of-way of any public highway, street, road, trail or alley used for motor vehicle travel.
(Code 1982, § 701.102)

Sec. 22-138. General restriction on snowmobiles.

Except as herein specifically permitted and authorized in this article it is unlawful for any person to operate a snowmobile on the right-of-way of any public highway, street, road, trail or alley used for motor vehicle travel.
(Code 1982, § 701.103)

Sec. 22-139. Application of traffic provisions.

City traffic ordinances shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.
(Code 1982, § 701.112)

Sec. 22-140. Penalty for violation.

Every person convicted of a violation of any of the provisions of this article shall be guilty of a misdemeanor and upon conviction, shall be punished in accordance with section 1-13.
(Code 1982, § 701.113)

Sec. 22-141. Operation on roadway restricted.

Except as specifically permitted in this article, it is unlawful for any person to operate a snowmobile within the right-of-way of any trunk, county state aid, county highway, or city street except in the ditch or outside bank or slope of the right-of-way, and in the same direction as the highway traffic on the nearest lane of the roadway adjacent thereto. Where no ditch exists, snowmobiles may be operated only on the right-hand side of the right-of-way, and in no event on the roadway or shoulder, except as needed to cross a roadway, in compliance with Section 22-143.
(Code 1982, § 701.104)

Sec. 22-142. Where operation prohibited.

The operation of a snowmobile or ATV is specifically prohibited on the following locations:

- (1) Within the right-of-way of any county state aid highway designated as a natural preservation route.

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- (2) Within the Village Historic Site – Residential (VHS-R) and Village Historic Site – Commercial (VHS-C) Districts, except for loading or unloading of a snowmobile or ATV.
(Ord 1997-49, 1/15/02)
- (3) On boulevards within any public right-of-way.
- (4) On public property, playgrounds and recreation areas, except areas specifically listed or authorized for such use by the city council, in which case, such use shall be lawful and snowmobiles or ATVs may be driven to and from such areas by the shortest route. Authorized areas in the city shall be designated by resolution of the city council.
- (5) On any other public property except as may be specifically permitted by other provisions of this Code.
- (6) Within 100 feet of any dwelling.
- (7) Within 200 feet of any church property during the hours of church services and during the hours of other church functions.
- (8) Within 100 feet of any fisherman, pedestrian, skating rink or sliding area where the operation would conflict with the use or endanger other persons or property.
- (9) On private property of another unless the land is clearly posted so as to allow the operation of snowmobiles or ATVs in compliance with M.S.A. § 84.90, or unless written permission has been otherwise obtained from the owner or person in control of such property. Such written permission must be in the immediate possession of the person operating the snowmobile or ATV.
(Code 1982, § 701.105)
- (10) Within the right-of-way of 22nd Street after March 1, 2004.
(Resolution 2004-13, 2/17/04)

Sec. 22-143. Crossing roadways.

Nothing in this article shall be deemed to prohibit a snowmobile or ATV from making a direct crossing of a street or highway from and to property where the operation of the snowmobiles or ATV is otherwise legal and permitted, provided:

- (1) The crossing is made at an angle of approximately 90 degrees to the direction of the street or highway and at a place where no obstruction prevents a quick and safe crossing;
- (2) The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the street or highway;
- (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard;
- (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway;
- (5) If the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are on; and
- (6) A snowmobile may be operated upon a bridge when required for the purpose of avoiding obstructions to travel when no other method of avoidance is possible; provided the snowmobile is crossing from and to property where the operation of a snowmobile is operated in the extreme right-hand lane, the entrance to the roadway is made within 100 feet of the bridge and the crossing is made without undue delay.
(Code 1982, § 701.106)

Sec. 22-144. Night operation restricted.

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It shall be unlawful for any person to drive or operate any snowmobile on city streets during the hours from 11:00 p.m. to 7:00 a.m.
(Code 1982, § 701.107(1))

Sec. 22-145. Specific prohibitions.

It shall be unlawful for any person to drive or operate any snowmobile or ATV within the limits of the city:

- (1) While under the influence of alcohol or a controlled substance. A person in control of operating a snowmobile or ATV under the influence of alcohol or a controlled substance is governed by the prohibitions and chemical testing requirements of M.S.A. ch. 84 and is punishable in accordance with that chapter.
- (2) At a rate of speed greater than reasonable or proper under all the given surrounding circumstances.
- (3) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.
- (4) Without a lighted head and taillight when required for safety.
- (5) In any tree nursery or planting in a manner which damages or destroys growing stock.
(Code 1982, § 701.107(2))

Sec. 22-146. Protection of animals.

It is unlawful to drive, chase, run over or kill any animal with a snowmobile or ATV.
(Code 1982, § 701.107(3))

Cross reference--Animals, Ch. 6.

Sec. 22-147. Speed limits.

Within the corporate limits of the old platted Village of Afton the speed limit must not exceed 15 miles per hour.
(Code 1982, § 701.107(4))

Sec. 22-148. Minors.

- (a) No person under 14 years of age shall operate a snowmobile or ATV on streets or the roadway surface of highways or make a direct crossing of a trunk, county state aid, county highway, or city street.
- (b) Persons 14 years of age or older, but less than 18 years of age, may operate a snowmobile on streets and highways as permitted under this article and make a direct crossing of such streets or highways only if they have in their immediate possession a valid snowmobile safety certificate issued by the commissioner, as provided by M.S.A. § 84.872.
- (c) It is unlawful for the owner of a snowmobile or ATV to permit the snowmobile or ATV to be operated contrary to the provisions of this section.
(Code 1982, § 701.108)

Sec. 22-149. Identification pennant.

It is unlawful to drive or operate any snowmobile or ATV any place within the limits of the city unless it is equipped with a pennant flag of red or blaze material, of a size not less than 12 inches by nine inches, at a height of not less than four feet from ground level at any time when the vehicle is operated on public streets.
(Code 1982, § 701.109(1))

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Sec. 22-150. Towing.

It is unlawful to drive or operate any snowmobile or ATV so as to tow any person or thing except through use of a rigid tow bar attached to the rear of the snowmobile or ATV.
(Code 1982, § 701.109(2))

Sec. 22-151. Leaving vehicle unattended.

Every person leaving a snowmobile or ATV at a public place shall lock the ignition, remove and take the key with them.
(Code 1982, § 701.110)

Sec. 22-152. Emergency operation.

Notwithstanding any prohibitions in this article, a snowmobile or ATV may be operated on a public thoroughfare in an emergency during the period of time when, and at locations where, snow upon the roadway renders travel by automobile impractical.
(Code 1982, § 701.111)

Sec. 22-153 - 160. Reserved.

ARTICLE V. USE OF MOTORIZED GOLF CARTS ON PUBLIC STREETS AND ROADWAYS OF THE CITY OF AFTON

Sec. 22-161. Adoption by Reference of MN Statute.

Except as herein specifically addressed or modified, the provisions of MN Statute Section 169.045 are herewith incorporated by reference.

Sec. 22-162. Motorized Golf Carts on City Streets.

a) WHEREAS, the State of Minnesota legislature has authorized the use of motorized golf carts on designated roadways within a City, on streets under their jurisdiction, and;

b) WHEREAS, the City Council sees the need to limit the availability of access to City streets and roadways using golf carts to persons who are over the age of sixteen (16), who have possessed a valid driver's license in the past, or who currently possess a valid driver's license, and who are physically disabled as herein defined, consistent with this Ordinance and all other laws and regulations applicable, making it difficult or impossible for the person to operate a standard motor vehicle, without modifications to the vehicle, within the City of Afton.

c) WHEREAS, the intent of this ordinance is to allow businesses and residents within the Old Village Historic Downtown to access the downtown area of Afton by use of a motorized golf cart, consistent with this Ordinance and all other laws and regulations that apply.

d) WHEREAS, the City Council desires no motorized golf carts shall be operated on top of the city levee and trail way nor on any sidewalk private or public.

e) THEREFORE, the following rules are adopted:

Sec. 22-163. Issuing Officer.

The City Council shall authorize the issuing of all permits and shall determine the streets or roadways of operation and the hours of operation if more restrictive than State Statute and deemed necessary for public safety reasons and may recommend the denial of a permit if the applicant's driving status is revoked, suspended or cancelled for prior violations or in the case of a business (for the use by their guests or employees) the business shall

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ensure the individual operator, the person(s) allowed to operate the motorized golf cart, has neither had their driving status revoked, suspended or cancelled.

The City Administrator, Sheriff, or designee may revoke a permit at any time upon finding that the holder has violated any of the provisions of this Ordinance or Chapter 169 of MN Statutes, or if there is any evidence that the permit holder cannot safely operate the motorized golf cart.

Sec. 22-164. Requirements for Permit.

Every application for a permit shall be made on a form supplied by the City and shall contain the information listed below. All permits shall be issued for a specific golf cart and a specific individual. The permit shall be carried in the vehicle, indicating the number and year for which issued.

- a) All motorized golf carts, and their drivers must carry liability insurance at all times when operating on a public street or roadway. A certificate of insurance must be provided at the time of permit application.
- b) Model name, make, year and serial number of the motorized golf cart is required.
- c) Name and address of applicant, and current driver's license (for a business: the business name and address and proof of insurance is all that is required) or reason for not having a current license is required.
- d) As a condition of obtaining a permit, the applicant may be required to submit a physician's certificate stating the applicant is able to safely operate a motorized golf cart on designated streets or roadways.
- e) The applicant shall present a certificate signed by a competent and experienced mechanic indicating the golf cart is in good mechanical condition, complete with rear view mirror, lights, (including brake lights, head lights and turn signals), brakes and a slow moving vehicle emblem and that it is safe for transportation of passengers.
- f) Other pertinent information as may be required.

Sec. 22-165. Other Requirements.

- a) Motorized golf carts must display the slow moving vehicle emblem provided for in MN Statutes, Section 169.522, when operated on a public streets or roadway.
- b) Every operator has all the rights and duties applicable to the driver of any other vehicle under the provisions of Chapter 169 of MN Statutes, except when these provisions cannot reasonably be applied to motorized golf carts and except as otherwise specifically provided in MN Statutes, Section 169.045, Subd. 7.
- c) Motorized golf carts may only be operated on streets and roadways as designated on the permit authorized by the City Council. No motorized golf carts shall be permitted to operate on the levee or levee trailway or any sidewalk be it public and/or private. The operator may cross any highway intersecting a designated street or roadway.
- d) Hours of permitted operation shall be from sunrise to sunset. Operation of a golf cart shall not be permitted during inclement weather or when visibility is impaired by weather, smoke, fog or other conditions or at any time wherein there is insufficient light to clearly see persons and vehicles on the street or roadway at a distance of 500 feet.
- e) If a licensed golf cart is disabled through mechanical failure or for needed repairs, the permit may be temporarily transferred to another golf cart for a seven (7) day period, but only upon verification of mechanical condition and insurance coverage of the substitute vehicle.

Sec. 22-166. Assumption of Liability.

Nothing in this ordinance shall be construed as an assumption of liability by the City for any injuries to persons or property which may result from the operation of a motorized golf cart by a permit holder or the failure by the City Administrator, Sheriff, or designee to revoke said permit.

Sec. 22-167. Initial Fee.

The city may charge an initial application fee of \$25 per individual (for a residence) or \$50 per business (for up to two carts, each additional cart shall add on \$10 onto the application fee). The annual permit fee must be paid prior to issuance of permit. The permit fee may be adjusted upon annual review by the Council.

Sec. 22-168. Violation and Penalty.

Violation of any provision of this ordinance shall be punishable as a misdemeanor according to Sec. 1-13.

(Ord. 4-2006, § 20-70 -- 78, 5/16/06)

Sec. 22-169 – 22-170. Reserved.

(Ord. 09-2013, § 22-161 – 22-170, 10/15/13)

ARTICLE VI. JUNK VEHICLES*

Sec. 22-171. 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:

Junk vehicle includes any motor vehicle, former motor vehicle or part of motor vehicle which is unusable or inoperable because of lack of, or defects in component parts, or damage from collision, deterioration or other factors, or is not properly licensed for operation in the state, unless allowed by one of the exemptions in Section 22-173.

(Code 1982, § 1103.102)

Cross reference--Definitions generally, § 1-2.

Sec. 22-172. Prohibitions.

No person shall cause or permit the parking, storing or keeping of a junk vehicle on any property within the city unless such vehicle is stored within an enclosed garage.

(Code 1982, § 1103.101)

Sec. 22-173. Exemptions.

(a) A classic or pioneer car, as defined in M.S.A. § 168.10, shall not be considered a junk motor vehicle within the meaning of this article as long as it has substantial potential further use consistent with its usual functions, and provided that any classic or pioneer car which is stored in the open shall be covered with an opaque cover designed or molded or otherwise fitted to the vehicle.

(b) A vehicle which is registered to the owner or occupant of the property where it is parked or kept, and which is being kept for repair on that property, provided that the vehicle is kept for no longer than 90 days in a disabled condition and its condition does not present a hazard, and provided that only one disabled vehicle may be kept on the property outside of an enclosed garage at any given time.

(Code 1982, § 1103.103)

Sec. 22-174 – 22-179. Reserved.

(Ord 06-2013, 4/16/2013)

***Cross references**—Solid waste management, Ch. 18.

State law references—Abandoned vehicles, M.S.A. § 168B.01 et seq.

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ARTICLE VII. AIRCRAFT

Sec. 22-180. Definitions.

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

Aircraft means a vehicle for traveling through air, which is not either an Unpowered Vehicle or Powered Vehicle as defined in this section.

Powered Vehicles means a powered ultra-light which has a maximum empty weight of 254 pounds; has a maximum fuel capacity of 5 U.S. gallons; is capable of less than 55 knots airspeed at full power in level flight; and has a power-off stall speed which does not exceed 24 knots (see FAA AC 103-7).

Unpowered Vehicles means an unpowered ultra-light under 155 pounds. Balloons and gliders are Unpowered Vehicles (see FAA AC 103-7).

Sec. 22-181. Restriction of take-offs and landings within the City of Afton.

The landing and taking-off of all Aircraft is prohibited in all districts within the city limits of Afton except for the following:

(a) An *Unpowered or Powered Vehicle*, which does not exceed the maximum noise levels as prescribed in Sec. 12-208 (b)(2), provided an annual permit is obtained from the City Administrator for the vehicle.

(b) Emergency landings and take-offs of aircraft as allowed under FAA regulations.

(Ord 44-2004, § new sections 22-180 and 22-181, 8/17/2004)

Secs. 22-182 – 22-189. Reserved.

Cross reference--Definitions generally, § 1-2.

***State law reference**—Authority to regulate off-road vehicles, M.S.A. § 84.804(6); authority to regulate snowmobiles, M.S.A. § 84.87(3); authority to regulate the operation of motorized golf carts and all-terrain vehicles, M.S.A. § 169.045.

Chapter 24

UTILITIES*

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***Cross references** – Land use, Ch. 12; public services in floodplain district, § 12-1015 et seq.; subdivisions, § 12-1251 et seq.; engineering standards for utilities and subdivisions, § 12-1427; buildings and building regulations, § 12-1771 et seq.; streets and sidewalks, Ch. 20; interference with public land, § 20-31 et seq.

State law reference – Authority to franchise public service corporations, M.S.A. §§ 301B.01, 301B.02; authority to own and operate utility systems, M.S.A. § 412.321.

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UTILITIES

ARTICLE I. IN GENERAL

Secs. 24-1--24-35. Reserved.

ARTICLE II. ELECTRIC

Sec. 24-36. 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:

City utility system refers to the facilities used for providing any public utility service owned or operated by city or agency thereof, including sewer and water service.

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

Notice means a writing served by any party or parties on any other party or parties. Notice to the company shall be mailed to any officer thereof at 414 Nicollet Mall, Minneapolis, Minnesota. Notice to city shall be mailed to the city clerk.

Public grounds means city parks and squares as well as land held by the city for the purpose of open space.

Public ways means streets, avenues, alleys, parkways, walkways and other public rights-of-way within the city. (Code 1982, § 1202.106)

Cross reference--Definitions generally, § 1-2.

Sec. 24-37. Grant of franchise.

The city hereby grants the company, for a period of 20 years from the date of adoption of the ordinance from which this section was derived, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of city as its boundaries now exist or as they may be extended in the future. For these purposes, the company may construct, operate, repair and maintain an electric distribution system and electric transmission lines, including poles, pole lines, duct lines, fixtures, and any other necessary appurtenances in, on, over, under and across the public ways and public grounds of the city. The company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this article. (Code 1982, § 1202.200)

Sec. 24-38. Location of facilities.

Company facilities included in the electric distribution system, transmission lines and appurtenances thereto, shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over the public ways. The company's construction, operation, repair, maintenance and location of such facilities shall be subject to such reasonable regulations as may be imposed by the city pursuant to ordinance or statute. (Code 1982, § 1202.301)

Sec. 24-39. New installations restricted.

The company shall not construct any new installations within or upon any public grounds without receiving the prior written consent of an authorized representative of the city for each new installation. (Code 1982, § 1202.302)

Sec. 24-40. Field locations for underground facilities.

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The company shall provide field locations for all its underground facilities when requested by the city within a reasonable period of time. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the county to locate municipal underground facilities for the company. (Code 1982, § 1202.303)

Sec. 24-41. Tree trimming.

The company is granted the permission and authority to trim all trees and shrubs in the public ways and public grounds of the city interfering with the proper construction, operation, repair and maintenance of any poles, pole lines, and fixtures or appurtenances installed in pursuance of the authority hereby granted; provided that the company shall save the city harmless from any liability in the premises. (Code 1982, § 1202.400)

Sec. 24-42. Service rates.

The service to be provided and the rates to be charged by the company for electric service in the city are subject to the jurisdiction of the public utilities commission of this state or its successor agency. (Code 1982, § 1202.500)

Sec. 24-43. Relocating.

(a) Whenever the city shall grade, regrade or change the line of any public way, or construct or reconstruct any city utility system therein and shall, in the proper exercise of its police power, and with due regard to reasonable working conditions, when necessary order the company to relocate permanently its lines, services and other property located in said public way, the company shall locate its facilities at its own expense. The city shall give the company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any city utility system therein. However, after the company has so relocated, if a subsequent relocation or relocations shall be ordered within ten years from and after first relocation, the city shall reimburse the company for such non-betterment relocation expense which the company may incur on a time and material basis; provided, if subsequent relocations are required because of the extension of city utilities to previously unserved areas, the company may be required to relocate at its own expense at any time.

(b) Nothing contained in this article shall require the company to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal, replacement or reconnection is for convenience and not of necessity in the construction or reconstruction of a city utility system or extension thereof.

(c) Any relocation, removal, or rearrangement of any company facilities made necessary because of the extension into or through the city of a federally aided highway project shall be governed by the provisions of M.S.A. § 161.46. It is expressly understood that the right herein granted to the company is a valuable property right and the city shall not order the company to remove or relocate its facilities without compensation when a public way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the federal government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to the company.

(d) Nothing contained in this section shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any city utility system. (Code 1982, § 1202.600)

Sec. 24-44. Indemnification.

The company shall indemnify, keep and hold the city free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair or operation of the company's electric facilities located in, on, over, under, or across the public ways and public grounds of the city, unless such injury or damage grows out of the negligence of the city, its employees, or agents, or results from the performance in a proper manner of acts reasonably deemed hazardous by the company, but such performance is nevertheless ordered or directed by the city after notice of the company's determination. If a suit shall be brought

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against the city under circumstances where the above agreement to indemnify applies, the company at its sole cost and expense shall defend the city in such suit if written notice thereof is promptly given to the company within a period wherein the company is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, the company shall have no duty to indemnify nor defend. If the company is required to indemnify and defend, it will thereafter have complete control of such litigation, but the company may not settle such litigation without the consent of the city, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the company; and the company, in defending any action on behalf of the city shall be entitled to assert in any action every defense or immunity that the city could assert in its own behalf.
(Code 1982, § 1202.700)

Sec. 24-45. Vacation of public ways.

Except where required solely for a city improvement project, the vacation of any public way or public ground, after the installation of electric facilities, shall not operate to deprive the company of its rights to operate and maintain such electrical facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the company.
(Code 1982, § 1202.800)

Sec. 24-46. Written acceptance.

The company shall, if it accepts the ordinance from which this article was derived and the rights and obligations thereby granted, file a written acceptance of the rights hereby granted with the city clerk within 90 days after the final passage and any required publication of the ordinance from which this article was derived.
(Code 1982, § 1202.900)

Sec. 24-47. Nonexclusive franchise.

The provisions of this article do not constitute an exclusive franchise.
(Code 1982, § 1202.1100)

Secs. 24-48--24-75. Reserved.

ARTICLE III. GAS

DIVISION 1. GENERALLY

Secs. 24-76--24-100. Reserved.

DIVISION 2. MINNESOTA GAS COMPANY

Sec. 24-101. 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:

Company means the Minnesota Gas Company, a Delaware corporation, its successors and assigns.

Gas means natural gas, manufactured gas, a mixture of natural gas and manufactured gas or other forms of gas energy.

Municipality, municipal council, municipal clerk mean, respectively, the City of Afton, the council of the City of Afton, and the Clerk of the City of Afton.
(Code 1982, § 1201.101)

Cross reference--Definitions generally, § 1-2.

Sec. 24-102. Grant of franchise.

There is hereby granted to the company, for a period of 25 years, the right to import, manufacture, transport, distribute and sell gas energy for public and private use in the municipality, and for these purposes to construct, operate, repair and maintain in, on, over, under and across the streets, alleys, public ways and public grounds of the municipality, all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to the provisions of this division.

- (1) *Effective date; written acceptance.* This division shall be in force and effect from and after the passage and publication of the ordinance from which this division was derived as required by law, which was accomplished on October 16, 1979, and its acceptance in writing by the company filed with the municipal clerk. The company shall, if it accepts this division and the rights hereby granted, file a written acceptance with the municipal clerk within 60 days after publication.

- (2) *Nonexclusive franchise.* The provisions of this division do not constitute an exclusive franchise.
(Code 1982, § 1201.102)

Sec. 24-103. Conditions of street use.

- (a) *Use of streets.* All utility facilities and equipment of the company shall be located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary traffic and travel upon the streets, alleys, public ways and public grounds of the municipality.

- (b) *Restoration of streets.* The company shall, upon completion of any work requiring an opening, restore the street, alley, public way or public ground to the same condition as before the opening was made, insofar as reasonably possible.

- (c) *Relocation of utility facilities.* The company shall relocate its facilities or equipment at its own expense whenever the municipality in the proper exercise of its police power shall grade, regrade, change the line or otherwise improve any street, alley, public way or public ground or construct or reconstruct any sewer or water system therein and shall, with due regard to seasonal working conditions, order the company to relocate permanently its facilities or equipment located in such street, alley, public way or public ground. The municipality shall give the company reasonable notice of plans requiring such relocation.

- (d) *Relocation when streets vacated.* The municipality may not order the company to relocate any of its facilities or equipment when a street, alley, public way or public ground is vacated, unless the reasonable cost of such relocation and the loss and expense resulting from such relocation are first paid to the company.
(Code 1982, § 1201.103)

Cross reference--Streets and sidewalks, Ch. 20.

Sec. 24-104. Indemnification.

The company shall indemnify and hold harmless the municipality, its officers, employees and agents from all liability on account of injury to persons or damage to property caused by the company's construction, maintenance, repair or operations in the municipality, unless such injury or damage is the result of the negligence of the municipality, its officers, employees or agents.
(Code 1982, § 1201.104)

Sec. 24-105. Termination.

If the company is in default in the performance of any material part of this division for more than 90 days after receiving written notice from the municipality of such default, the municipal council may, by ordinance duly passed and adopted, terminate all rights granted hereunder to the company. The notice of default shall be in writing and specify the provision of this franchise under which the default is claimed and state the basis therefor upon all material issues relative to such default. Such notice shall be served on the company by personally delivering it to an officer thereof at its principal place of business. The reasonableness of any ordinance declaring a termination of the rights and privilege granted by this franchise, shall be subject to judicial review by a court of competent jurisdiction.

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(Code 1982, § 1201.105)

Sec. 24-106. Publication expense.

The expense of publication of the ordinance from which this division was derived shall be paid by the company.
(Code 1982, § 1201.106)

Sec. 24-107. Assignment.

The company upon notice to the municipality shall have full right and authority to assign all rights conferred upon it by this division to any person. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this division.
(Code 1982, § 1201.108)

Sec. 24-108. Change in form of government.

Any change in the form of government of the municipality shall not affect the validity of this division. Any governmental unit succeeding the municipality shall, without the consent of the company, automatically succeed to all of the rights and obligations of the municipality provided in this division.
(Code 1982, § 1201.109)

Secs. 24-109--24-135. Reserved.

DIVISION 3. GAS FRANCHISE. XCEL ENERGY

Sec. 24-136. Definitions.

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

City. The City of Afton, County of Washington, State of Minnesota.

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

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

Company. Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns, including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this franchise.

Gas Facilities. Gas transmission and distribution pipes, mains, regulators and necessary appurtenances owned or operated by Company for the purpose of providing natural gas, manufactured gas, or other form of gaseous energy for public use.

Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Gas Facilities, taking into consideration salvage value of Facilities removed.

Notice. A writing served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Legal Services, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the City shall be mailed to the City Administrator, City Hall, 3033 St. Croix Trail South, P.O. Box 219, Afton, MN 55001-0219. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

Public Way. Public right-of-way within the City as defined in Minn. Stat. § 237.163, subd. 3.

Sec. 24-137. Adoption of Franchise.

(1) **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right and privilege of erecting a gas distribution system and using the Public Ways and Public Grounds for the purpose of installing, operating, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of the City as its boundaries exist or as they may be extended in the future. Company may do all reasonable things necessary or customary to accomplish these purposes, subject however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to further provisions of this franchise agreement.

(2) **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 90 days after the date the City Council adopts this Ordinance, or otherwise places the City on notice, before that time, that the Company does not accept all terms of this franchise, the City Council by resolution may revoke this Ordinance or seek its enforcement in a court of competent jurisdiction.

(3) **Service and Rates.** The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Commission.

(4) **Publication Expense.** The expense of publication of this Ordinance shall be paid by City and reimbursed to City by Company within 30 days.

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

(6) **Continuation of Franchise.** If the City and Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 24-137(1).

Sec. 24-138. Location, Other Regulations.

(1) **Location of Facilities.** Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt or interfere with the normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to any permit requirements authorized in a separate ordinance and other reasonable regulations of the City, consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this franchise agreement. Company may abandon underground Gas Facilities in place, provided at City's request, Company at its own expense, removes abandoned metal conduits or concrete encased conduit or other Facilities interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City's improvement project.

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(2) **Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance for which the City may impose a reasonable fee, subject to the provisions of Section 24-143. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work.

Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, e-mail or similar notice to the City before, if reasonably possible, commencement of the emergency repair. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

(3) **Restoration.** After undertaking any work requiring the opening of any Public Way, Company shall restore the Public Way in accordance with Minnesota Rules, Part 7819.1100 and applicable City ordinances to the extent consistent with law. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for two years thereafter, but shall have no obligation to water any grass or other vegetation thereon. All work shall be completed as promptly as weather permits and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ground at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section.

(4) **Performance Security.** In the absence of a specific written request from the City, the Company is exempt from posting a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way or the Public Ground. The City reserves the right to require a performance bond for new installation, replacement, or repairs, when the Company's completion of its work is required in order for the City to proceed with its work for constructing a public improvement to the Public Way.

(5) **Major Facilities.** Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from the City. Such approval by the City shall not be unreasonably withheld. The Company shall abide by all City codes in the maintenance of all structures.

(6) **Avoid Damage to Gas Facilities.** Nothing in this Ordinance relieves any person, including Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities or other persons or property while performing any activity.

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

(8) **Mapping Information.** Company must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules Parts 7819.4000 and 7819.4100.

Sec. 23-139. Relocations.

(1) **Relocation in Public Ways.** If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Gas Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 23-139(3), Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable

notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, or to avoid interference with a joint project of the City with another governmental unit, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Gas Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

(2) Relocation in Public Grounds. The City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable city ordinances consistent with law.

(3) Projects with Federal Funding. Relocation, removal, or rearrangement of any Gas Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46, as supplemented or amended. It is expressly understood that the right herein granted to Company is a valuable property right. City shall not order Company to remove or relocate its facilities without compensation when a Public Way is vacated, improved or re-aligned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable Non-betterment Costs of such relocation and the loss and expense resulting therefrom are first paid to Company. The City is obligated to pay Company, however, only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company.

(4) No Waiver. By entering this or any prior franchise agreement with the City, Company does not waive its rights under an easement or prescriptive right or State or County permit.

Sec. 23-140. Indemnification.

(1) Indemnity of City. Company shall indemnify and hold harmless the City from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

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

Sec. 23-141. Vacation of Public Ways.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required solely for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall the City be liable to Company for failure to specifically preserve a right-of-way, under Minnesota Statutes, Section 160.29. In accordance with Minnesota Rules, Part 7819.3200, if the City's order directing vacation of the Public Way does not require relocation of the Company's Gas Facilities to prevent interference with a current public improvement, the vacation proceedings shall not be deemed to deprive Company

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of its right to continue to use the right-of-way of the former Public Way for its Gas Facilities installed prior to such order of vacation.

Sec. 23-142. Change in Form of Government.

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

Sec. 23-143. Franchise Fee.

(1) **Fee Schedule.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on the Company, the City may impose on the Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the initial fee collected by the Company and paid to the City in accordance with this Section 23-143 shall not exceed the following amounts:

<u>Class</u>	<u>Fee Per Month</u>
Residential	\$ 2.00
Comm. Firm Non-Demand	\$ 4.00
Comm. Firm Demand	\$ 5.00
Small Interruptible	\$ 5.00
Large Interruptible	\$ 5.00
Firm Transportation	\$ 5.00
Interruptible Transportation	\$ 5.00

(2) **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 24-137(5) shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. Notwithstanding the formula set forth above, during the term of this franchise at intervals no more frequently than one year, the City may impose a lesser fee under Section 24-143 (4) or the City may request an amendment pursuant to Section 24-146 allowing the City to impose a greater fee on one or more Classes of customer and/or a different fee design, including but not limited to, a customer usage fee, or a meter fee. If the City proposes such an amendment, it shall notify Company in writing no less than six (6) months prior to the anniversary date of the then current franchise fee required by the City. Promptly thereafter, City and Company shall attempt to negotiate a mutually acceptable modification to the fee amount and design for intended future collection by Company. If City and Company are unable to agree on a modification, all disputes shall be resolved pursuant to Section 24-137 (5) of this franchise ordinance. Nothing in this Section is intended to be a limitation on the City's right to raise revenue under Minnesota Statutes, Section 216B.36

(3) Terms Defined.

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

(3.2) "Fee Schedule" refers to the Schedule in Section 24-143(1) setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Classes added by the Company to its gas tariffs after the effective date of this franchise agreement.

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

(4) Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. The fee may be changed by ordinance from time to time, however each change shall meet the same notice requirements and may not occur more often than annually. Such fee shall not exceed any amount, which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for Gas service. The Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds. The time and manner of collecting the franchise fee is subject to approval of the Public Utilities Commission, which the Company agrees to use best efforts to obtain. The Company agrees to make its records available for inspection by the City at reasonable times, provided that the City and its designated representative agree in writing not to disclose any information that is not public data which would indicate the amount paid by any identifiable customer or any other information regarding specific customers.

(5) Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company, unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The “same or greater equivalent amount” shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for the franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 23-143(5), the foregoing conditions will be waived to the extent of such written consent. Notwithstanding the foregoing, the City retains the final right to determine a franchise fee structure that is a reasonably equivalent fee.

Sec. 24-144. Tree Trimming.

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

Sec. 24-145. Provisions of Ordinance.

(1) Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part; provided, however, if any provision is held invalid, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

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

Sec. 24-146. Amendment Procedure.

Either party to this franchise agreement may at any time propose that the agreement be amended. This Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company’s written consent thereto with the City Clerk after City council adoption of the amendatory ordinance.

(Ord. 6-2004, § 24-136 – 24-146, 8/17/2004)