BROOKLYN PARK, MN
CODE OF ORDINANCES

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ADOPTING ORDINANCES

ORDINANCE #2000-930B

AN ORDINANCE ENACTING A CODE OF ORDINANCE FOR THE CITY OF BROOKLYN PARK, MINNESOTA, AMENDING, RESTATING, REVISING, UPDATING, CODIFYING AND COMPILING CERTAIN ORDINANCES OF THE CITY DEALING WITH THE SUBJECTS EMBRACED IN THE CODE OF ORDINANCES, AND PROVIDING PENALTIES FOR THE VIOLATION OF THE CODE OF ORDINANCES.

WHEREAS Minnesota Statutes Sections 415.02 and 415.021, and the Brooklyn Park City Charter Section 3.11 authorize the city to cause its ordinances to be codified and printed in a book,

NOW THEREFORE the City Council of the City of Brooklyn Park, Minnesota, does ordain:

Section 1. The general ordinances of the City as amended, restated, revised, updated, codified and compiled in book form, including penalties for the violations of various provisions thereof, are hereby adopted and shall constitute the "Code of Ordinances of the City of Brooklyn Park, Minnesota." This Code of Ordinances also adopts by reference certain statutes and administrative rules of the State of Minnesota as named in the Code of Ordinances. It is intended that any future amendments to a statute or administrative rule of the State of Minnesota, and any federal law, rule or regulation be included in the Code of Ordinances as if the amended statute, law, rule or regulation had been in existence at the time the code was adopted.

Section 2. The Code of Ordinances as adopted in Section 1 shall consist of the following titles:

Title I: General Provisions

Title III: Administration

Title VII: Traffic Code

Title IX: General Regulations

Title XI: Business Regulations

Title XIII: General Offenses

Title XV: Land Usage

Table of Special Ordinances

Appendix: Fee Resolution

Parallel References

Section 3. All prior ordinances, pertaining to the subjects treated in the Code of Ordinances, shall be deemed repealed from and after the effective date of this ordinance, except as they are included and re-ordained in whole or in part in the Code of Ordinances; provided, this repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this ordinance, nor shall this repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall this repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code of Ordinances. All fees established in prior ordinances codified in this Code shall remain in effect unless amended in this code or until an ordinance or resolution adopting a fee schedule is adopted or amended.

Section 4. This ordinance adopting the Code of Ordinances shall be a sufficient publication of any ordinance included in it and not previously published in the City's official newspaper. The Clerk of the City shall cause a substantial quantity of the Code of Ordinances to be printed for general distribution to the public at actual cost and shall furnish a copy of the Code of Ordinances to the County Law Library or its designated depository. The official copy of this Code of Ordinances shall be marked and kept in the office of the City Clerk.

Section 5. The Code of Ordinances is declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by Minnesota Statutes by the Courts of the State of Minnesota.

Section 6. This ordinance adopting the Code of Ordinances, and the Code of Ordinances itself, shall take effect 30 days after publication of this ordinance in the City's official newspaper.

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GRACE ARBOGAST, MAYOR

ATTEST:

_____

JOAN SCHMIDT, CITY CLERK

Approved as to Form by City Attorney

Passed on First Reading 08-14-00

Passed on Second Reading 08-28-00

Published in Official Newspaper 09-06-00 and 09-13-00

This book publication is correct and this book so published shall be received in evidence in all courts for the purpose of providing the ordinances therein contained, the same as though the original ordinances were produced in court.

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GRACE ARBOGAST, MAYOR

ATTEST:

_____

JOAN SCHMIDT, CITY CLERK

TITLE I: GENERAL PROVISIONS

Chapter

CHAPTER 10: GENERAL PROVISIONS

Section

§ 10.01 TITLE OF CODE.

This codification of ordinances by and for the City of Brooklyn Park, Minnesota is designated as the Brooklyn Park City Code and may be so cited.

§ 10.02 RULES OF INTERPRETATION.

(A) *Generally*. Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application must govern the interpretation of this code as those governing the interpretation of state law.

(B) *Specific rules of interpretation*. The construction of all ordinances of this municipality must be by the following rules, unless such construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(1) ***AND*** *or* ***OR.*** Either conjunction includes the other as if written "and/or," if the context requires.

(2) *Acts by assistants*. When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

(3) *Gender; singular and plural; tenses.* Words denoting the masculine gender are deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(4) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.03 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.04 DEFINITIONS.

(A) *General rule.* Words and phrases may be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law must be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY, MUNICIPAL CORPORATION, or ***MUNICIPALITY.*** The City of Brooklyn Park, Minnesota.

CODE, THIS CODE or ***THIS CODE OF ORDINANCES.*** This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. Hennepin County, Minnesota.

MAY. The act referred to is permissive.

MONTH. A calendar month.

MUST. The act referred to is mandatory.

OATH. 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***. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or ***DEPARTMENT***. An officer, office, employee, commission, or department of this municipality unless the context clearly requires otherwise.

PENAL OFFENSE. The violation of an ordinance, code, or other legislative action of the Council for which fines or imprisonment are prescribed and shall have the meanings set forth in § 10.99 and Chapter 70 of this code. ***PENAL OFFENSES***, even though the word misdemeanor is erroneously used, shall be distinguished from violations of state law called misdemeanors which are defined in state law as crimes.

PERSON. Extends to and includes an individual, person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms ***PERSON*** or ***WHOEVER*** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PETTY OFFENSE. The violation of an ordinance, code, or other legislative action of the Council for which a sentence of a fine of not more than $200 may be imposed and no sentence of imprisonment may be imposed and shall have the meanings set forth in § 10.99 and Chapter 70 of this code. ***PETTY OFFENSE***, even though the word misdemeanor or term petty misdemeanor may be erroneously used, shall be distinguished from violations of state law called misdemeanors which are defined in state law as crimes, and further distinguished from violations of state law called petty misdemeanors which are described in state law as not constituting a crime.

PRECEDING or ***FOLLOWING.*** Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or ***SUBSCRIPTION.*** Includes a mark when the person cannot write.

STATE. The State of Minnesota.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

('72 Code, § 1400:00)

§ 10.05 SEVERABILITY.

Every section, provision or part of the code is declared separable from every other section, provision or part, and if any section, provision of part of the code shall be held invalid, it shall not affect another section, provision or part thereof.

('72 Code, § 1200:00)

§ 10.06 REFERENCE TO OTHER SECTIONS OR LAWS.

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision. Whenever a provision in this code adopts the provisions of another portion of this code, state or federal law or state or federal regulations by reference it also adopts by reference any subsequent amendments of such code provision, law, or regulation, except where there is a clearly stated intention to the contrary.

§ 10.07 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this municipality exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.08 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.09 OFFICIAL TIME.

The official time, as established by applicable state and federal laws, must be the official time within this municipality for the transaction of all municipal business.

§ 10.10 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice is deemed to mean the time which is necessary for a prompt performance of such act or the giving of such

notice.

(B) The time within which an act is to be done, as herein provided, is computed by excluding the first day and including the last. If the last day is a legal holiday or a Sunday, it shall be excluded.

§ 10.11 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

§ 10.12 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.13 EFFECTIVE DATE OF ORDINANCES.

Ordinances are effective in accordance with Section 3.08 of the City Charter.

§ 10.14 REPEAL OR MODIFICATION OF ORDINANCE.

(A) If any ordinance or part of an ordinance is repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

§ 10.15 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

§ 10.16 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section.

Example: (Ord. 10, passed 5-13-60; Am. Ord. passed 1-1-70; Am. Ord. passed 1-1-80; Am. Ord. passed 1-1-85)

(B) (1) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute.

Example: (M.S. § 609.034) (Ord. 10, passed 1-17-80; Am. Ord. passed 1-1-85)

(2) A statutory cite set forth as a "statutory reference" following the text of the section indicates that the reader should refer to that statute for further information.

Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

For provisions concerning the inspection of public records, see M.S. §§ 138.163 et seq.

§ 10.17 CHAPTER, SECTION AND SUBDIVISION HEADINGS.

All chapter, section, subsection and subdivision headings of this code are to be construed as not part of the subject mater of the code, but are intended for convenience only and not as comprehensive titles.

§ 10.18 COPIES OF CODE.

Copies of this code are kept in the office of the City Clerk for public inspection and sale for a reasonable charge.

§ 10.19 ADOPTION BY REFERENCE.

Statutes or administrative rules or regulations of the State of Minnesota, codes and ordinances adopted by reference in this code are adopted pursuant to authority granted by M.S. § 471.62. At least one copy of any item so adopted, but not less than the number of copies required by law, must be kept in the office of the City Clerk for use by the public.

§ 10.20 CITY COUNCIL DISTRICTS.

(A) *West District.* That part of Brooklyn Park west of a line described as follows: commencing at the point of intersection of the Brooklyn Park-Champlin corporate limits and the centerline of Winnetka Avenue North (CSAH 103); thence south along the centerline of Winnetka Avenue North (CSAH 103) to the centerline of West Broadway (CSAH 103); thence south along the centerline of West Broadway (CSAH 103) to the centerline of 85th Avenue North (CSAH 109); thence East along the centerline of 85th Avenue North (CSAH 109) to the centerline of Zane Avenue North (CSAH 14); thence south along the centerline of Zane Avenue North (CSAH 14) to the centerline of Brooklyn Boulevard (CSAH 152) thence south along the centerline of Zane Avenue North to the centerline of 73rd Avenue North; thence East along the centerline of 73rd Avenue North to the centerline of Unity Avenue North; thence south along the centerline of Unity Avenue North to the Brooklyn Park-Brooklyn Center corporate limits.

(B) *Central District.* That part of Brooklyn Park described as follows: commencing at the point of intersection of the Brooklyn Park-Champlin corporate limits and the centerline of Noble Parkway North (CSAH 12); thence south along the centerline of Noble Parkway North (CSAH 12) to the centerline of 85th Avenue North (CSAH 109); thence East along the centerline of 85th Avenue North (CSAH 109) to the centerline of Xerxes Avenue North; thence south along the centerline of Xerxes Avenue North to the centerline of 74th Avenue North; thence south along a line to the southeast corner of the northeast 1/4 of Section 27. Said line intersects the Brooklyn Park-Brooklyn Center corporate limits; thence west along the Brooklyn Park-Brooklyn Center corporate limits to the intersection of the Brooklyn Park-Brooklyn Center corporate limits and the centerline of Unity Avenue North; thence north along the centerline of Unity Avenue North to the centerline of 73rd Avenue North; thence west along the centerline of 73rd Avenue North to the centerline of Zane Avenue North; thence north along the centerline of Zane Avenue North to the centerline of Brooklyn Boulevard (CSAH 152); thence north along the centerline of Zane Avenue North (CSAH 14) to the centerline of 85th Avenue North (CSAH 109); thence west along the centerline of 85th Avenue North (CSAH 109) to the centerline of West Broadway (CSAH 103); thence north along the centerline of West Broadway (CSAH 103) to the centerline of Winnetka Avenue North (CSAH 103); thence north along the centerline of Winnetka Avenue North (CSAH 103) to the intersection of Winnetka Avenue North (CSAH 103) and the Brooklyn Park-Champlin corporate limits; thence east along the Brooklyn Park-Champlin corporate limits to the point of commencement and there terminating.

(C) *East District.* That part of Brooklyn Park east of a line described as follows: commencing at the point of intersection of the Brooklyn Park-Brooklyn Center corporate limits and the southeast corner of the northeast 1/4 of Section 27; thence north along a line to the intersection of the centerline of 74th Avenue North and the centerline of Xerxes Avenue North; thence north along the centerline of Xerxes Avenue North to the centerline of 85th Avenue North (CSAH 109); thence west along the centerline of 85th Avenue North (CSAH 109) to the centerline of Noble Parkway North (CSAH 12); thence north along the centerline of Noble Parkway North (CSAH 12) to the intersection of Noble Parkway North (CSAH 12) and the Brooklyn Park-Champlin corporate limits.

(Ord. 2003-994, passed 3-24-03; Am. Ord. 2012-1137, passed 4-2-12)

§ 10.99 GENERAL PENALTY.

(A) Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than $1,000, or both.

(B) Any person, firm or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction, be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than $300.

(C) In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(D) The failure of any officer or employee of the city to perform any official duty imposed by this code shall not subject the officer or employee to the penalty imposed for a violation.

Cross-reference:

Administrative penalties, see Ch. 37

Definitions for penal offense and petty offense, see § 10.04

Statutory reference:

Ordinance violations and penalties, see M.S. §§ 412.231 and 609.034

TITLE III: ADMINISTRATION

Chapter

CHAPTER 30: CITY COUNCIL

Section

GENERAL PROVISIONS

§ 30.01 SALARY OF MAYOR AND COUNCIL MEMBERS.

(A) The monthly salary of each Council member shall be $895 per month until January 1, 2007, at which time it shall be $922 per month until January 1, 2008, at which time it shall be $950 per month, and the monthly salary for the Mayor shall be $1343 per month until January 1, 2007, at which time it shall be $1383 per month until January 1, 2008, at which time it shall be $1425 per month.

(B) The salary schedule referred to in division (A) of this section is established on the basis that the offices of Mayor and Council member in this city are part-time positions. The Mayor and/or Council members are sometimes required to attend municipal functions or to take time from their regular employment to perform services beneficial to the city. Additional compensation is paid to the Mayor or Council members in those cases subject to the following conditions:

(1) The activity and number of days for which a Council member is to be engaged must be approved by the City Council prior to

member's participation.

(2) The Mayor and Council member will be paid $50 per day as supplemental compensation for each day approved and for which the member is in attendance at the approved activity.

('72 Code, § 115:00) (Am. Ord. 1996-817, passed 5-13-96; Am. Ord. 1998-880, passed 5-11-98; Am. Ord. 2000-923, passed 4-10-00; Am. Ord. 2002-976, passed 6-10-02; Am. Ord. 2006-1054, passed 1-23-06)

RULES AND PROCEDURES

§ 30.15 MEETINGS.

The Council has regular meetings on the first, second and fourth Mondays of each month commencing at 7:00 p.m. If any of the Mondays falls on a holiday, the Council will have its regular meeting on the following day and adjourned special meetings at any other time the Council may deem proper. All meetings are held in the City Hall or elsewhere as designated by the Council.

('72 Code, § 100:00) (Am. Ord. 1978-265(A), passed 5-22-78; Am. Ord. 1988-588(A), passed 1-25-88; Am. Ord. 1998-878, passed 4-13-98; Am. Ord. 2003-988, passed 2-3-03; Am. Ord. 2005-1031, passed 1-18-05; Am. Ord. 2015-1187, passed 2-17-15)

§ 30.16 MAYOR TO PRESIDE.

The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the Mayor Pro Tem must preside. In the absence of both, the Council members must elect one of their number as a temporary Chair. The Mayor Pro Tem and temporary Chair, when occupying the place of the Mayor, have the same privileges as other members.

('72 Code, § 100:03)

§ 30.17 AGENDA.

At the hour appointed for meetings, the members shall be called to order by the Mayor and in the absence of the Mayor by the Mayor Pro Tem, and in the absence of both by the City Clerk. The City Clerk shall call the roll, note the absentees and announce whether a quorum is present. In the absence of the City Clerk, the Mayor shall appoint a Secretary Pro Tem. Upon the appearance of a quorum, the Council must proceed to business which shall be conducted as established by the City Council by resolution.

('72 Code, § 100:09) (Am. Ord. 1998-878, passed 4-13-98)

§ 30.18 MAYOR DUTIES AND RIGHTS.

The Mayor shall preserve order and decorum and shall decide questions of order subject to appeal to the Council. The Mayor may make motions, second motions or speak on any question, provided however, that in order to do so upon demand of any one Council member, the Mayor may vacate the Chair and designate the Mayor Pro Tem, if the Mayor Pro Tem is present, or if the Mayor Pro Tem is not present, a Council member to preside temporarily. The Mayor may vote on any matter before the Council.

('72 Code, § 100:12)

§ 30.19 SPEAKING.

A member may not speak more than twice on any question, nor more than five minutes each time, without the consent of a majority of the Council.

('72 Code, § 100:15)

§ 30.20 IN WRITING.

Resolutions and motions, except a motion to adjourn, postpone, reconsider, commit, lay on the table, or for the previous question, must be in writing, if the Mayor or any member so requests; when made and seconded it shall be stated by the Mayor, or being written, shall be read by the City Clerk, and may be withdrawn before decision or amendment or any disposition thereof has been made or a vote taken thereon.

('72 Code, § 100:21)

§ 30.21 QUESTION UNDER DEBATE.

When a question is under debate no motion shall be entertained unless to adjourn, to lay on the table, to act on the previous question, to postpone, to commit or to amend, which several motions shall have precedence in the order in which they are named and the first three shall be decided without debate.

('72 Code, § 100:24)

§ 30.22 VOTING.

(A) When a question is put by the Mayor, every member present must vote unless excused by the Council, but if interested the member shall not vote. In doubtful cases, the Mayor may direct or any member call for a division. It is assumed that every vote is unanimous and it must be recorded accordingly unless a poll of the members is called upon a requisition of the Mayor or any member, in which case the names of the members voting are required to be recorded in the minutes and whether each has voted yea or nay.

(B) Votes of the members on any business coming before the Council may be by voice vote, standing vote, or in such other manner of voting as may signify the intention of the members.

('72 Code, § 100:30)

§ 30.23 COMMITTEES.

Committees are appointed by the Mayor unless otherwise ordered by the Council.

('72 Code, § 100:33)

§ 30.24 ORDINANCES.

An ordinance except an emergency ordinance must receive two readings by the City Clerk before the Council previous to its passage unless the reading is dispensed with by unanimous consent, but may not be read twice at the same meeting. An ordinance introduced or considered must be recorded in the minutes by title.

('72 Code, § 100:42)

§ 30.25 ORDINANCE BOOK.

Ordinances must be signed by the Mayor and deposited with the City Clerk, who must attest, seal, number, file and record, or place the same permanently in the ordinance book. The affidavit of publication of the ordinance must be permanently inserted in the ordinance book after each ordinance.

('72 Code, § 100:51)

§ 30.26 PETITIONS, PAPERS AND AGENDA.

Petitions and other papers addressed to the Council must be in writing and filed with the City Clerk not later than 3:00 p.m. the Wednesday prior to any regular meeting at which it will be presented. At the time of the meeting, such papers must be read by the City Clerk unless the reading is dispensed by unanimous consent of the Council. All matters heard by the Council must be according to a written agenda prepared prior to the meeting. The City Clerk must be notified by 3:00 p.m. the Wednesday prior to the regular meetings of all matters to be placed on the agenda, except that matters carried over from a previous meeting may be placed on the agenda without further notice.

('72 Code, § 100:54)

§ 30.27 LIMITATION TO PUBLIC.

Only the Mayor and other members of the Council and city officials are admitted within the bar of the Council. Persons other than Council members may not address the Council except by a vote of a majority of the members present. Persons addressing the Council may speak for no more than ten minutes, unless additional time is granted by the Mayor.

('72 Code, § 100:57)

§ 30.28 ROBERT'S RULES OF ORDER.

Matters not covered by the City Charter and by these rules are governed in its procedure by *Robert's Rules of Order, Latest Revised Edition*.

('72 Code, § 100:69)

§ 30.29 COMPLIANCE.

The rules in this chapter are adopted to facilitate the transaction of Council business and functions. Informal compliance and substantial performance are sufficient under the foregoing rules in the absence of objection seasonably taken by a Council member. Objection is hereby declared not to have been seasonably taken as to procedural matters provided for herein if a Council member present at a meeting fails to object during the meeting in compliance with these rules, and such objection is not seasonably taken if taken by an absent member later than the next regular meeting after the proceedings to which objection is made.

('72 Code, § 100:72)

§ 30.30 SPECIAL MEETINGS.

(A) Special meetings may be called by the Mayor or any three members of the Council upon at least 72 hours notice is given to each member of the Council. The notice must be delivered personally to each member or left at the member's usual place of residence with some responsible person.

(B) Special meetings may be held without notice when all members are present and take part in the meeting or consent in writing to hold such special meeting without other notice. The written consent must be filed with the City Clerk prior to the commencement of the meeting. A special meeting attended by all members is a regular meeting for the transaction of any business that may come before it.

('72 Code, § 100:78)

§ 30.31 MINUTES.

(A) Minutes of meetings must be kept by the City Clerk. Minutes must be signed by the City Clerk, and constitute an official record of the Council proceedings. Upon approval of the minutes at a subsequent meeting of the Council, the Mayor must sign the minutes. Lack of such Mayor's signature or Council approval does not invalidate the minutes as official records.

(B) In the event the City Clerk fails or declines to amend or change the minutes, upon informal request, at the time they are

submitted for approval, the Council may by motion carried by majority vote amend the minutes. The amending motion becomes a part of the minutes of the subsequent meeting.

('72 Code, § 100:81)

§ 30.39 APPOINTMENT TO BOARDS AND COMMISSIONS.

Notwithstanding any provisions of this Code to the contrary, if there are no applicants for an appointment to a board or commission residing in the district from which the appointment is required to be made, an applicant residing in any district of the city may be appointed to such board or commission.

(Ord. 2000-932, passed 9-11-00)

CHAPTER 31: DEPARTMENTS, BOARDS, AND COMMISSIONS

Section

Cross-reference:

Department of Community Development, see Chapter 39

Department of Engineering and Building Inspections, see Chapter 40

Fire Department, see Chapter 32

Police Department, see Chapter 33

RECREATION AND PARK DEPARTMENT

§ 31.01 ESTABLISHMENT.

There is hereby continued as heretofore created a Recreation and Park Department. The Department and all its employees operate under the jurisdiction and control of the City Manager and the Department Director.

('72 Code, § 240:00) (Am. Ord. 1997-863, passed 11-24-97)

§ 31.02 DUTIES.

The Recreation and Park Department, supervised by the Department Director, responsible to the City Manager, is responsible for all programs relating to parks and public recreation and is responsible for planning improvements and operation of all public parks, playgrounds and public recreation programs of the city.

('72 Code, § 240:05) (Am. Ord. 1997-863, passed 11-24-97)

BOARD OF APPEALS AND ADJUSTMENTS

§ 31.15 ESTABLISHMENT OF BOARD.

There is hereby created within the City of Brooklyn Park a Board of Appeals and Adjustments as required by state statutes. The Board consists of the City Planning Commission. All members serve without compensation, but are entitled to reimbursement for expenses incurred by performing their duties. The Chair of the Planning Commission serves as Chair of the Board of Appeals and Adjustments and must appoint a Secretary, who may be but need not be a member of the Board. Staff services are furnished by the City Manager or designee.

('72 Code, § 205:00)

§ 31.16 ADVISORY BOARD.

The Board of Appeals and Adjustments is advisory to the Council and all decisions made by the Board must be transmitted to the Council in writing in the form of recommendations. The Council makes the final determination on all appeals.

('72 Code, § 205:05)

§ 31.17 DUTIES OF BOARD.

The Board of Appeals and Adjustments is charged with the following duties:

(A) To hear and make recommendations with respect to appeals from any order, requirement, decision, or determination made by the administrative officer of the city in the enforcement of the zoning code.

(B) To hear requests for variances from the literal provisions of the zoning code in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration and to recommend such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the zoning code. Provided, however, that neither the Board nor the Council may permit as a variance any use which is prohibited under the zoning ordinance for property in the zones where the affected persons' land is located. The Board or Council, as the case may be, may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

('72 Code, § 205:10)

§ 31.18 NOTICE OF HEARING.

No matter may be heard by the Board unless and until the applicant has been given ten days notice in writing of the date and place of the hearing. Notice is deemed to have been given when deposited in the United States mail, addressed to the appellant at the appellant's last known address.

('72 Code, § 205:15)

§ 31.19 REPORTS.

All recommendations to the Council must be reduced to writing and a copy thereof must be mailed to appellant. The mailing of the minutes of the meetings of the Board is sufficient to satisfy this requirement.

('72 Code, § 205:20)

HEALTH OFFICER; BOARD OF HEALTH

§ 31.30 HEALTH OFFICER; APPOINTMENT AND DUTIES.

(A) The Health Officer is appointed by the City Manager, with the approval of the Council.

('72 Code, § 230:00) (Am. Ord. 1977-245(A), passed - -)

(B) The Health Officer serves in an advisory capacity to the Council and the Board of Health. The Health Officer must see that all health laws and regulations are obeyed. The Health Officer must take such legal steps as are necessary to control communicable disease, and must advise the City Council and the Board of Health of any health regulations or directions of the State Board of Health that are not being carried out. The Health Officer must advise the Council and Board of Health in a medical way as to diagnosis for the purpose of quarantine, release of quarantine, details of necessary control methods, and other technical preventive measures. The

Health Officer is responsible for the duties placed upon local health officers by the statutes of the State of Minnesota.

('72 Code, § 230:05)

§ 31.31 BOARD OF HEALTH.

(A) *Policy*. The Board of Health, the Health Officer, or their duly authorized representatives have and must exercise all powers to make such investigations and reports and to obey such directions concerning communicable diseases as the State Board of Health may require or give; and, under the general supervision of the State Board of Health, must cause all statutes of the State of Minnesota, Regulations of the Board of Health, and ordinances of the City to be obeyed and enforced. The actual enforcement of these laws, regulations, and ordinances is the duty and responsibility of the City Manager or the City Manager's duly authorized representative.

(B) *Membership*. The Board of Health for the city consists of eight members. Seven members must be the members of the City Council. One member must be a physician, licensed to practice in the State of Minnesota, who must be the City Health Officer appointed pursuant to § 31.30(A) and who must also be the executive officer of the Board of Health. The Health Officer must serve until his resignation or until a successor is appointed.

(C) *Duties of Board*. The duties of the Board of Health and the Health Officer are as defined in the statutes of the State of Minnesota and the regulations of the State Board of Health. The Board of Health serves in an advisory capacity to the Health Officer and the City Manager in making recommendations concerning the general health program within the city.

(D) *Meetings of the Board*. The Board of Health meets at such times as it may deem necessary. A majority of the members constitutes a quorum. The Board must make such regulations as they deem necessary for their meetings and for the conduct of their business.

(E) *Administration*. The City Manager, or his duly authorized representative, must make investigations and reports, and obey directions concerning communicable diseases as the Board of Health may require or give; and, under the general supervision of the Board of Health, they must cause all statutes of the State of Minnesota, regulations of the State Board of Health, ordinances of the city relating to public health, and all lawful orders of the City Council to be obeyed and enforced.

(F) *Right of entry*. For the purposes of performing their official duties, all members, officers, and employees of the Board of Health, the Health Officer and their duly authorized representatives have the right to enter any building, conveyance or place where contagion, infection, filth, nuisance, or source or cause of preventable disease exists or is reasonably suspected.

('72 Code, § 230:10)

§ 31.32 ENFORCEMENT PROVISIONS.

The City Manager may employ an Environmental Health Specialist and Assistant Environmental Health Specialist or other health officials who must enforce all statutes, ordinances and codes relating to public health and sanitation, and may achieve compliance through the issuance of notices, warning tickets, citations and abatement in lieu of arrest or detention.

('72 Code, § 230:15) (Ord. 1987-570(A), passed 8-24-87)

RECREATION AND PARKS ADVISORY COMMISSION

§ 31.45 ESTABLISHMENT.

There is hereby continued as heretofore created a Recreation and Parks Advisory Commission. All 12 members must be lawful residents of the City of Brooklyn Park. All members must be appointed by the Council, for terms of three years, excepting the ex-officio members, who serve a one-year term. Vacancies are to be filled for the remainder of the original term of office in the same manner as provided for original appointments. One member, who is an ex-officio member must be a member of the Council, and there must be one member who is an ex-officio member who must be a member of the Planning Commission.

('72 Code, § 245:00) (Am. Ord. 1973-139(A), passed 2-26-73; Am. Ord. 1008-1086, passed 4-7-08)

§ 31.46 COMPENSATION.

The members of the Commission serve without pay but may be reimbursed for actual expenses if funds therefor are provided in the adopted budgets of the Recreation and Park Department Fund.

('72 Code, § 245:05)

§ 31.47 DUTIES.

It is the duty of the Commission to hold meetings of its members at least once a month on a regular scheduled meeting date, and to meet from time to time with the City Manager, the Council, and the Director of Recreation and Park to consider such matters pertaining to parks and public recreation programs in the city as are referred to the Commission by the Council, the City Manager, the Director of Recreation and Park, or as the members of the Commission deem proper.

('72 Code, § 245:10)

§ 31.48 REPORTS.

The Commission must make an annual report to the City Manager and the Council containing such details as the Council requires, concerning its estimate of financial needs and its recommendations for the ensuing year. The Commission must report quarterly on its activities to the Council.

('72 Code, § 245:15)

§ 31.49 REPORTS TO BE ADVISORY.

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

('72 Code, § 245:20)

PLANNING COMMISSION

§ 31.60 ESTABLISHMENT; COMPOSITION.

There is hereby continued as heretofore created a Planning Commission for the City of Brooklyn Park to have all the powers provided by state law and as set forth in this subchapter.

(A) There are nine members of the Commission to be appointed by the Council in the manner hereinafter set forth.

(B) All members of the Commission must be lawful residents of the City of Brooklyn Park.

(C) The nine members are appointed to serve for terms of three years each, except that any vacancy occurring among the members of the Planning Commission during an unexpired term must be filled for the rest of the term by vote of the Council. Any members of said Commission may be removed for cause by the Council upon notice, written charges, and after a public hearing. Appointments must be made as soon after the first of each year as practicable.

(D) The members of the Commission must take the usual oath of office and the Commission must appoint its own Chair and Secretary and may provide its own rules of procedure. It must determine regular dates and times of meetings, which are to be held at least once a month, and it must call public hearings when appropriate. No member of the Commission shall pass or vote upon any question in which the member is directly or indirectly interested.

(E) The Commission must prepare all reports as the Council shall request.

('72 Code, § 250:00) (Am. Ord. 1973-154(A), passed 2-26-73; Am. Ord. 2008-1086, passed 4-7-08)

§ 31.61 DUTIES.

The Planning Commission must hear and review all petitions to amend the zoning classifications of this code or to obtain a special permit. The Planning Commission must then report its recommendations to the Council for action.

('72 Code, § 250:10)

§ 31.62 PREPARATION AND MAINTENANCE OF COMPREHENSIVE PLAN.

The Planning Commission must prepare and maintain comprehensive plans and maps for the future development of the city and make recommendations from time to time of such changes or amendments it deems necessary. Public notice and hearings must be as required by this code and applicable ordinances and laws. Nothing herein prevents the Council from initiating any proposal concerning comprehensive planning, zoning, platting, changes in streets and other matters of general planning nature, provided, however, that any proposal must first be referred to the Planning Commission for any hearings required by law and for their recommendations.

('72 Code, § 250:15)

HUMAN RIGHTS COMMISSION

§ 31.75 ESTABLISHMENT.

A Human Rights Commission comprised of nine members is established for the purpose of securing for all citizens equal opportunity in employment, housing, public accommodations, public services, education, and full participation in the affairs of the city by assisting the Minnesota Department of Human Rights in implementing state laws against discrimination and by advising the City Council in long-range programs to ensure human service needs are met.

('72 Code, § 290:00) (Ord. 1993-726, passed 7-12-93; Am. Ord. 2007-1078, passed 10-15-07)

§ 31.76 COMPOSITION AND REPRESENTATION.

All nine members of the Commission must be lawful residents of the city. All members are appointed by the Council and serve staggered three-year terms. Any vacancy occurring among the members during an unexpired term must be filled for the rest of term by vote of the Council. Members of the Commission may be removed for cause by the Council upon notice and written charges and after a public hearing. Members of the Commission serve without compensation, but may be reimbursed personal expenses in the performance of their duties.

('72 Code, § 290:05) (Ord. 1993-726, passed 7-12-93; Am. Ord. 1998-870, passed 3-23-98; Am. Ord. 2008-1086, passed 4-7-08)

§ 31.77 INITIAL APPOINTMENTS.

One member from each district must serve a one-year term; one member from each district must serve a two-year term; and one member from each district must serve a three-year term.

('72 Code, § 290:10) (Ord. 1993-726, passed 7-12-93)

§ 31.78 ORGANIZATION.

(A) The Commission must elect from its membership a Chair, and a Vice Chair, each of whom must serve for a period of not more

than three years. The Chair must preside at all meetings of the Commission. In the absence of the Chair, the Vice Chair must preside. The Chair must rotate between each district at the time of election.

(B) The Commission must appoint a Secretary from its membership or at its election request that a staff secretary be furnished by the city.

(C) All meetings of the Commission must be open to the public, be governed by *Roberts Rules of Order* and otherwise held pursuant to the by-laws adopted by the Commission. It is the duty of the Secretary of the Commission to record the minutes of all meetings and transmit a copy thereof to each member of the Commission, City Council and City Manager.

('72 Code, § 290:15) (Ord. 1993-726, passed 7-12-93)

§ 31.79 DUTIES.

Duties of the Human Rights Commission are to:

(A) Adopt by-laws for the conduct of its affairs.

(B) Receive complaints and determine if the complaint is to be forwarded to the State Department of Human Rights for the purpose of investigation, or to North Hennepin Mediation Services for alternative dispute resolution.

(C) Improve the home, family, and human relations climate in the community.

(D) Enlist the cooperation of the Minnesota League of Human Rights Commission and other agencies, organizations and individuals in the community in an active program directed to create equal opportunity and to educate the community in order to eliminate discrimination and inequalities.

(E) Advise the Mayor, the Council and other city agencies on human relations and civil rights issues and problems. Act in an advisory capacity to the city on issues of civil and human rights. Recommend the adoption of specific policies or actions as are needed to ensure equal opportunity in the community.

(F) Assist in the development, formulation, and implementation of a comprehensive plan to serve as a guideline to ensure that the human relations needs of the community are defined and met.

('72 Code, § 290:20) (Ord. 1993-726, passed 7-12-93; Am. Ord. 2007-1078, passed 10-15-07)

THE BUDGET ADVISORY COMMISSION

§ 31.90 ESTABLISHMENT.

The Budget Advisory Commission is an ongoing, citizen-led commission called to design and propose budgetary suggestions to the City Council reflecting the input and priorities of residents in the City of Brooklyn Park. The Commission will make use of previous budget information, review current and projected city service levels, analyze priorities from citizen input, consider long and short-term anticipated capital and operating expenditures, and identify revenue sources with consideration to projected expenditures. The Commission may also be asked to perform specific studies or present recommendations based on City Council requests.

(Ord. 2003-992, passed 3-17-03)

§ 31.91 DUTIES.

Duties of The Budget Advisory Commission are to:

(A) Review all budgets of the city, such as city, EDA and the like, and long range plans, such as CIP/CEP and the like.

(B) Review results of previous citizen surveys, City Council goals and prioritization of city services.

(C) Recommend any necessary or reasonable survey or information gathering process to gain current resident preferences.

(D) Review historical and future trends of revenues and expenditures, both capitol and operating.

(E) Review budget challenges and recommend solutions.

(F) Formulate suggestions to the City Council on prioritized budget programs and choices between competing demands with citizen input.

(G) By May 31, the Commission shall present a recommendation for future funding along with comments on the city's overall trends and provide suggestions for any specific requests made by the City Council.

(H) Through objective measures of department performance, determine if the city is efficiently managing and allocating the community's resources.

(I) Complete a self-evaluation of the commission and make recommendations to the City Council on how to improve the process.

(Ord. 2003-992, passed 3-17-03)

§ 31.92 COMPOSITION AND REPRESENTATION.

(A) Residents shall be appointed to the Budget Advisory Commission by the Mayor and approved by the City Council.

(B) Membership shall consist of nine lawful residents.

(C) Members shall serve staggered terms of three years. No member shall serve more than two consecutive three-year terms.

(D) The Mayor shall initially appoint members with the following staggered term length: Three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all appointments or re-appointments shall be for a three-year term.

(E) Terms shall expire on the first of June of the last year of their appointed term or following the Commission's formal presentation to the Council.

(F) Vacancies shall be filled by the Mayor with the approval of the City Council, within 30 days for the remainder of the unexpired term length.

(G) A Chairperson is to be chosen from among the appointed Commission members.

(H) A non-voting representative of the Finance and Administration Department shall staff the Budget Advisory Commission. The Commission shall be provided with any requested information, data, or materials and shall be able to discuss any matters with the appropriate staff. Staff members may also have the ability to address the Commission as a whole with matters of concern.

(I) There shall be a non-voting representative of the City Council assigned to act as liaison to the Budget Advisory Commission.

(Ord. 2003-992, passed 3-17-03; Am. Ord. 2008-1086, passed 4-7-08)

§ 31.93 DESIRED QUALIFICATIONS.

Members of the Budget Advisory Commission must have the ability to translate survey data to priorities and outcomes; evaluate financial information; have familiarity with the needs and challenges of Brooklyn Park; and the willingness to commit to weekend and/or evening meetings.

(Ord. 2003-992, passed 3-17-03)

CHAPTER 32: FIRE DEPARTMENT

Section

§ 32.01 DEPARTMENT ESTABLISHED.

There is continued, as established in the city, a Fire Department consisting of a full-time Chief, a minimum of two Assistant/Deputy Fire Chiefs, and no less than 30 firefighters.

('72 Code, § 225:00) (Am. Ord. 1995-784, passed 7-10-95)

§ 32.02 FIRE CHIEF; DUTIES.

The Chief is the executive head of the Fire Department and serves as Fire Marshal for the city. The Chief is appointed by the City Manager subject to the approval of the City Council. The Fire Chief is also the head of the Bureau of Fire Prevention of the city and has full authority to execute all laws, ordinances and rules relating to fire prevention, fire fighting and the Fire Department of the city. The Chief is responsible for the training and discipline of members of the department and for the organization thereof as an effective firefighting unit; the Chief keeps records of all fires and fire calls, determines the cause of all fires and reports the same monthly in writing to the City Manager; the Chief is responsible for compliance by the Fire Department and members thereof with all the laws, ordinances and rules established by the City Council and for directions received from the City Manager relating to the Fire Department. The Fire Chief must be selected based on training, experience, executive and administrative qualifications and overall merit and fitness.

('72 Code, § 225:05) (Am. Ord. 1972-120(A), passed - -; Am. Ord. 1982-395(A), passed 7-26-82; Am. Ord. 1999-894, passed 2-22-99)

§ 32.03 APPOINTMENT OF ASSISTANT/DEPUTY FIRE CHIEFS.

The positions of Assistant/Deputy Fire Chiefs are appointed by the Fire Chief based on merit and fitness and approved by the City Manager.

('72 Code, § 225:10) (Am. Ord. 1985-505(A), passed 12-2-85; Am. Ord. 1995-784, passed 7-10-95)

§ 32.04 FIRE MARSHAL.

The office of the Fire Marshal is held by the Fire Chief. The Fire Chief may appoint investigators/inspectors to assist and carry out the functions or responsibilities of the position under the direction of the Fire Marshal. The Fire Marshal is charged with the enforcement of all ordinances aimed at fire prevention and has full authority to inspect all premises and cause the removal or

abatement of all fire and life safety hazards.

('72 Code, § 225:15) (Am. Ord. 1985-505(A), passed 12-2-85)

§ 32.05 EQUIPMENT AND REPORTS.

The Fire Chief has control over all of the firefighting apparatus and is responsible for its care and condition. The Fire Chief must make a report annually to the City Manager as to the condition of the equipment and as to the needs of the Fire Department. The Fire Chief may submit additional reports and recommendations to the City Manager as the Fire Chief deems necessary.

('72 Code, § 225:20) (Am. Ord. 1982-395(A), passed 7-26-82)

§ 32.06 DISCIPLINE.

The Fire Chief shall have the authority to suspend any member for refusal to obey orders or for neglect in the member's duties or for cause and the suspensions shall be made with the approval of the City Manager.

('72 Code, § 225:25)

§ 32.07 RECORD OF FIRES.

The Chief must keep in convenient form a complete record of all fires. The record must include the time of the alarm, location of fire, cause of fire (if known), type of building, name of owner and tenant, purpose for which occupied, value of building and contents, members of the department responding to the alarm and such other information as the Fire Chief may deem advisable or as may be required from time to time by the Council or State Insurance Department.

('72 Code, § 225:30)

§ 32.08 AUTHORITY OF ASSISTANT/DEPUTY FIRE CHIEFS.

In the absence or disability of the Fire Chief, the Senior Assistant/Deputy Fire Chief must perform all the functions and exercise all of the authority of the Fire Chief.

('72 Code, § 225:40) (Am. Ord. 1985-505(A), passed 12-2-85; Am. Ord. 1995-784, passed 7-10-95)

§ 32.09 QUALIFICATIONS OF PERSONNEL.

Each firefighter must be not less than 18 years of age and able-bodied. They become members of the Fire Department only after a one year probationary period and meeting Fire Department requirements. The Council must require that each candidate, before becoming a probational firefighter, complete and pass an ability test, physical examination, and criminal background check. All firefighters are selected by the Board of Officers with approval by the Fire Chief and their appointment made by the City Manager in accordance with the provisions of applicable ordinances of the city.

('72 Code, § 225:45) (Am. Ord. 1982-395(A), passed 7-26-82; Am. Ord. 1985-505(A), passed 12-2-85; Am. Ord. 1995-784, passed 7-10- 95)

§ 32.10 RULES AND REGULATIONS.

The Board of Officers must promulgate policies, procedures, rules and regulations for its members and for the operations of the Fire Department in accordance with the provisions of applicable ordinances of the city. The Fire Chief and the Board of Officers have authority to execute these policies, procedures, rules, and regulations.

('72 Code, § 225:46) (Am. Ord. 1995-784, passed 7-10-95)

§ 32.11 BOARD OF OFFICERS.

The Board of Officers is comprised of the Fire Chief, Assistant/Deputy Fire Chiefs, the Station/District Officers, and the Fire Marshal.

('72 Code, § 225:47) (Am. Ord. 1995-784, passed 7-10-95)

§ 32.12 ABSENCE.

Firefighters absent from drills, meetings or calls as required by the department rules and regulations, unless excused by the Chief, shall be subject to disciplinary action including suspension or forfeiture of membership as specified in department rules and regulations.

('72 Code, § 225:50) (Am. Ord. 1982-395(A), passed 7-26-82)

§ 32.13 RELIEF ASSOCIATION.

The members and officers of the Fire Department shall organize themselves into a Firefighter's Relief Association.

('72 Code, § 225:55)

CHAPTER 33: POLICE DEPARTMENT

Section

Cross-reference:

Disposition of unclaimed property, see §§ 38.15 et seq.

GENERAL PROVISIONS

§ 33.01 [RESERVED].

§ 33.02 SERVICE OF PROCESS.

The Chief of Police of the city and any police officers are designated as the officers of the city for the service of process.

('72 Code, § 265:00)

§ 33.03 ENFORCEMENT.

The City Manager may employ community service officers or youth resource specialists to work at the direction of the Chief of Police in the enforcement of statutes, codes and city ordinances pertaining to animals, parking, junk vehicles, youth related matters, and park regulations, who may achieve compliance by issuing notices, warning tickets and citations in lieu of arrest or detention.

('72 Code, § 265:05) (Am. Ord. 1987-570(A), passed 8-24-87)

POLICE RESERVE FORCE

§ 33.15 COMPOSITION.

The Police Reserve Force consists of the Chief of Police and as many other police reserve officers as the Council may from time to time authorize. The police reserve officers are chosen by the City Manager based on merit and fitness and upon recommendation of the Chief of Police.

('72 Code, § 270:00)

§ 33.16 DUTIES OF POLICE CHIEF.

The Chief of Police shall:

(A) Train and equip the police reserve officers in accordance with the rules and regulations of the Police Department.

(B) Assign the duties of the police reserve officers.

(C) Make periodic inspections to see that the duties of the police reserve officers are carried out properly.

(D) Appoint a full-time police officer of the city to the position of Reserve Coordinator to assist in training and to oversee the activities of the police reserve officers.

('72 Code, § 270:05)

§ 33.17 COMMAND.

The Chief of Police is the commander of the Police Reserve Force. The Police Reserve Force is subject to this command and control at all times when on duty.

('72 Code, § 270:10)

§ 33.18 DUTIES OF SPECIAL POLICE OFFICERS.

When, and only when, assigned duties by the City Manager or the Chief of Police or their designee, each police reserve officer shall perform duties as assigned.

('72 Code, § 270:15)

§ 33.19 EXPENSES AND DISBURSEMENTS.

The police reserve officers may be assigned to perform the duties of the Police Department or may be assigned to do special duty at a fixed place at the expense of the person for whom the duty is performed. The funds so collected become part of the Police Reserve Fund which must be used and disbursed in accordance with the usual requirements for the receipt, custody, and disbursement of funds of the city by the City Manager and the Council, as the City Manager and Council determine from time to time.

('72 Code, § 270:20)

§ 33.20 UNIFORMS.

The police reserve officers wear a special police badge and uniform or other insignia to identify them as police reserve officers.

('72 Code, § 270:25)

§ 33.21 CIVIL DEFENSE DUTIES.

In event of nuclear attack or natural disaster the police reserve officers may be assigned by the Emergency Management Director and will be under this jurisdiction and control until the situation is under control, at which time they revert back to the jurisdiction and control of the Police Department.

('72 Code, § 270:30)

CHAPTER 34: FINANCE AND REVENUE; TAXATION

Section

HERITAGE INFRASTRUCTURE FUND

§ 34.01 HISTORY AND PURPOSE.

(A) The City of Brooklyn Park has been a rapidly developing and growing community which growth has required extensive public improvements. The Heritage Fund was created in 1991 from surplus special assessment funds and such funds continue to be deposited in the fund.

(B) The City Council believes that these funds should be preserved and managed for the benefit of all our citizens. The purpose of this subchapter is to establish and continue a special fund to be called the Heritage Infrastructure Fund which is to be administered to preserve the principal and continue additional growth of the fund. This subchapter establishes a program which will benefit current and future citizens and is intended to assist future generations as well. It is the intent of this section that the Heritage Infrastructure Fund be preserved and maintained for future generations.

('72 Code, § 130:00) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.02 FUND CREATED.

There is created and continued a separate fund designated as the Heritage Infrastructure Fund. The fund is to be maintained in the official city records and administered by the Finance Director in accordance with the provisions of this section and state law. Into the fund are to be deposited:

(A) The collections of special assessments and taxes levied for the payment of the costs of an assessable public improvement that are received after the improvement costs including debt service on bonds issued for the improvement have been fully paid.

(B) Investment earnings generated by the monies in the Fund.

(C) Other monies appropriated by the Council or donated for the purposes of the fund.

(D) Monies in the Debt Service Fund after all debt obligations for the improvement have matured and been paid.

('72 Code, § 130:05) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.03 FUND PURPOSES.

The fund is to be used solely to pay the capital costs of projects of general benefit to the city except as modified by this section.

('72 Code, § 130:10) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.04 INVESTMENT OF HERITAGE INFRASTRUCTURE FUND MONIES.

Investment of monies must be made in accordance with the official investment policy adopted by the City Council.

(Ord. 1999-901, passed 6-28-99)

§ 34.05 EXPENDITURE LIMITATION.

No more than 15% of the investment earnings of the fund may be spent in any calendar year for current operations or current programs that are funded by the general fund and included in the budget.

('72 Code, § 130:15) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.06 PLANNING CAPITAL PROJECTS.

(A) Capital improvement projects must be included in the adopted Long-Range Infrastructure Plan (Plan) in order to receive funding from the fund.

(B) A capital project that is to be funded by the Fund must be shown on the City's Five Year Capital Improvement Plan for a minimum of two successive years prior to being funded. Exceptions to this requirement may be made by the City Council in the following circumstances:

(1) The City Council may determine that an emergency project is needed immediately to protect and preserve the public health, safety, and general welfare, or

(2) Two-thirds of the City Council may after a public hearing determine that (i) no other funding source is available or (ii) that other funding sources for the project are more costly and the Heritage Infrastructure Fund resources are necessary to provide the most efficient method of funding the capital project.

(3) The Plan shall be updated at least every two years.

('72 Code, § 130:25) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.07 FUND ALLOCATIONS.

Decisions for expenditures of Heritage Infrastructure Fund must be made during the city's annual budget process. The Heritage Infrastructure Fund must be included in budget resolutions as a funding source. Annual fund allocations must be considered as a part of the public hearing on the annual budget.

(A) *Reports*. The City Manager must annually submit, prior to July 1, a report to the Council which must show such detail about the fund as may be requested by the Council.

(B) *Temporary borrowing*. The Council may by resolution authorize loans from the fund for any capital purpose. The term of such a loan may not exceed three years and it must bear interest payable to the fund at a rate of interest not less than the average annual percentage yield on all investments of the fund for the fiscal year in which the loan is made.

('72 Code, § 130:30) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.08 ADMINISTRATIVE EXPENDITURES.

Reasonable expenses necessary for the administration of the Heritage Infrastructure Fund are to be paid from the fund.

('72 Code, § 130:35) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

§ 34.09 AMENDMENTS.

An amendment to this section must be adopted by affirmative vote of at least six members of the City Council after a public hearing preceded by ten days published notice.

('72 Code, § 130:40) (Ord. 1991-685(A), passed 11-25-91; Am. Ord. 1999-901, passed 6-28-99)

LODGING TAX

§ 34.20 PURPOSE.

The State Legislature has authorized the imposition of a tax upon lodging at a hotel, motel, rooming house, tourist court or other use of space by a transient; and, the imposition of such a tax would provide funding for a convention and tourism bureau to promote the city as a tourist and convention center.

('72 Code, § 285:00) (Ord. 1986-536(A), passed 7-28-86)

§ 34.21 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word ***MUST*** is always mandatory and not merely directory.

CITY. The City of Brooklyn Park.

DIRECTOR. The Finance Director of the city.

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging by a hotel, motel or rooming house except where the lodging is for a continuous period of 30 days or more to the same lodger(s). The furnishing of rooms by religious, educational or non-profit organizations must not constitute ***LODGING*** for purposes of this subchapter.

OPERATOR. A person who provides lodging to others or any officer, agent or employee of the person.

PERSON. Any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or any other combination of individuals. Whenever the term ***PERSON*** is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association or partnership, means the officers, or partners thereof as the case may be.

RENT. The total consideration valued in money charged for lodging whether paid in money or otherwise, but does not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

('72 Code, § 285:00) (Ord. 1986-536(A), passed 7-28-86)

§ 34.22 IMPOSITION OF TAX.

There is imposed a tax of 3% on the rent charged by an operator for providing lodging to any person on and after August 1, 1986. The tax must be stated and charged separately and must be collected by the operator from the lodger. The tax collected by the operator is a debt owed by the operator to the city and is extinguished only by payment to the city. In no case shall the tax imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.

('72 Code, § 285:05) (Ord. 1986-536(A), passed 7-28-86)

§ 34.23 COLLECTIONS.

Each operator must collect the tax imposed by this subchapter at the time the rent is paid. The tax collections are deemed to be held in trust by the operator for the city. The amount of tax must be separately stated from the rent charged for the lodging.

('72 Code, § 285:10) (Ord. 1986-536(A), passed 7-28-86)

§ 34.24 EXCEPTIONS AND EXEMPTIONS.

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

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

('72 Code, § 285:15) (Ord. 1986-536(A), passed 7-28-86)

§ 34.25 ADVERTISING NO TAX.

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

('72 Code, § 285:20) (Ord. 1986-536(A), passed 7-28-86) Penalty, see § 10.99

§ 34.26 PAYMENT AND RETURNS.

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

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

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

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

(4) The period covered by the return.

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

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

('72 Code, § 285:25) (Ord. 1986-536(A), passed 7-28-86)

§ 34.27 EXAMINATION OF RETURN ADJUSTMENTS, NOTICES AND DEMANDS.

The Director may rely upon the Minnesota sales tax return filed by the operator with the State of Minnesota in determining the accuracy of a return filed under this subchapter. The Director may after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination is the tax to be paid. If the tax due is found to be greater than that paid, such excess must be paid to the city within ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess must be refunded to the

person who paid the tax to the city within ten days after determination of such refund.

('72 Code, § 285:30) (Ord. 1986-536(A), passed 7-28-86)

§ 34.28 REFUNDS.

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

('72 Code, § 285:35) (Ord. 1986-536(A), passed 7-28-86)

§ 34.29 FAILURE TO FILE A RETURN.

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

(B) If any portion of a tax imposed by this subchapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the City Attorney may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursements of any action.

(C) Upon a showing of good cause, the Director may grant an operator one 30 day extension of time within which to file a return and make payment of taxes as required by this subchapter provided that interest during such period of extension must be added to the taxes due at the rate of 10% per annum.

('72 Code, § 285:40) (Ord. 1986-536(A), passed 7-28-86)

§ 34.30 DELINQUENT TAXES.

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

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

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

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

(E) The amount of tax not timely paid, together with any penalty provided by this section, bears interest at the rate of 8% per annum from the time such tax should have been paid until paid. Any interest and penalty must be added to the tax and be collected as part thereof.

('72 Code, § 285:45) (Ord. 1986-536(A), passed 7-28-86)

§ 34.31 ADMINISTRATION OF TAX.

The Director administers and enforces the assessment and collection of the taxes imposed by this subchapter. The Director shall cause to be prepared blank forms for the returns and other documents required by this subchapter and must distribute the same throughout the city and furnish them on application, but failure to receive or secure them does not relieve a person from any obligation required of the person under this subchapter unless it can be established that the required forms were not available from the city.

('72 Code, § 285:50) (Ord. 1986-536(A), passed 7-28-86)

§ 34.32 EXAMINE RECORDS.

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

('72 Code, § 285:55) (Ord. 1986-536(A), passed 7-28-86)

§ 34.33 CONTRACT WITH STATE.

The City Manager is authorized to confer with the Minnesota Commissioner of Taxation to the end that an agreement between the city and the Commissioner of Taxation may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this subchapter. Such an agreement shall not become effective until presented to the Council for its approval and when so approved the tax imposed by this subchapter shall be collected and administered pursuant to the terms of the agreement.

('72 Code, § 285:60) (Ord. 1986-536(A), passed 7-28-86)

§ 34.34 VIOLATIONS.

A person who willfully fails to make a return required by this subchapter; or who fails to pay the tax after written demand for payment, or who fails to remit the taxes collected or any penalty or interest imposed by this subchapter after written demand for such payment or who refuses to permit the Director or any duly authorized agents or employees to examine the books, records and papers under the person's control, or who willfully makes any incomplete, false or fraudulent return is guilty of a misdemeanor.

('72 Code, § 285:65) (Ord. 1986-536(A), passed 7-28-86) Penalty, see § 10.99

§ 34.35 USE OF PROCEEDS.

The 95% proceeds obtained from the collection of taxes pursuant to this subchapter must be used in accordance with M.S. § 477A.018 as the same may be amended from time to time to fund a local convention or tourism bureau for the purpose of marketing and promoting the city as a tourist or convention center.

('72 Code, § 285:70) (Ord. 1986-536(A), passed 7-28-86)

§ 34.36 APPEALS.

(A) An operator aggrieved by any notice, order or determination made by the Director under this subchapter may file a petition for

review of such notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition must contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.

(B) The petition for review must be filed with the City Clerk within ten days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.

(C) Upon receipt of the petition the City Manager, or the City Manager's designee, must set a date for a hearing and give the petitioner at least five days prior written notice of the date, time and place of the hearing.

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

(E) The hearing must be conducted by the City Manager or the City Manager's designee, provided only that the person conducting the hearing must not have participated in the drafting of the order, notice or determination for which review is sought.

(F) The person conducting the hearing must make written findings of fact and conclusions based upon the applicable sections of this chapter and evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the director.

(G) Any decision rendered by the City Manager pursuant to this section may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Clerk within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as is practical. The Council must then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the City Manager or the City Manager's designee upon the same standards as set forth in division (F) of this section.

('72 Code, § 285:75) (Ord. 1986-536(A), passed 7-28-86)

CHAPTER 35: ELECTIONS

Section

§ 35.01 DATE OF REGULAR ELECTIONS.

The regular city election is held on the first Tuesday after the first Monday in November of each even-numbered year.

('72 Code, § 110:00)

§ 35.02 NOTICE OF ELECTION.

The City Clerk must cause at least 15 days notice of the annual city election by posting a notice thereof in at least one public place in each precinct and by publishing a notice thereof at least once in the official newspaper of the city specifying the time and place thereof, the offices to be filled, and the questions, if any, to be determined by vote.

('72 Code, § 110:05)

CHAPTER 36: EMERGENCY MANAGEMENT

Section

§ 36.01 EMERGENCY MANAGEMENT ACT ADOPTED.

The "Minnesota Emergency Management Act," M.S. Chapter 12, as amended, insofar as it relates to cities, is hereby adopted by reference as part of this chapter, as fully as if set forth explicitly herein. One copy of the code as adopted is to be marked as the "Official Copy" and is on file in the City Clerk's Office for use and examination by the public.

('72 Code, § 215:00) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

§ 36.02 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

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

EMERGENCY. An unforeseen combination of circumstances that calls for immediate action to prevent a disaster from developing or occurring.

EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters.

('72 Code, § 215:05) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

§ 36.03 ESTABLISHMENT OF AN EMERGENCY MANAGEMENT DIVISION.

There is created within the City of Brooklyn Park an Emergency Management Division, which is under the supervision of the City Manager. The City Manager appoints a Director of Emergency Management. The Director of Emergency Management has direct responsibility for the organization, administration and operations of the Emergency Management Division, as outlined by Brooklyn Park's Emergency Operations Plan as approved by the Brooklyn Park City Council.

('72 Code, § 215:10) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

§ 36.04 LOCAL EMERGENCIES.

A local emergency may be declared only by the Mayor or designated legal successor. Such an emergency is not to be continued for a period in excess of three days except by or with the consent of the City Council.

('72 Code, § 215:15) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

§ 36.05 POWERS AND DUTIES OF EMERGENCY MANAGEMENT DIRECTOR.

(A) *General operations.* The Emergency Management Director directs and coordinates the general operation of all local efforts and the provision of all local emergency services during an emergency, in conformity with controlling regulations and instructions of state authorities from the Division of Emergency Management.

(B) *Intergovernmental arrangements.* The Emergency Management Director represents the city on any regional or state organization on emergency preparedness. The Director also may develop proposed mutual aid agreements with other political subdivisions for reciprocal aid and assistance in an emergency too great to be dealt with unassisted, which agreements must be presented to the City Council for approval.

(C) *Plans and reports.* The Emergency Management Director prepares emergency operation plans for the city and such reports of activities as deemed appropriate or as are requested by the City Council.

(D) *Use of city personnel.* In an emergency the Emergency Management Director utilizes the personnel, services, equipment, supplies and facilities of existing departments, and agencies of the city to the maximum extent practicable.

('72 Code, § 215:20) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

§ 36.06 APPOINTMENT OF COORDINATOR.

The Emergency Management Director is to appoint deputy directors to assist in carrying out the functions and responsibilities of the Emergency Management Division.

('72 Code, § 215:25) (Am. Ord. 1985-504(A), passed 12-2-85; Am. Ord. 1991-677(A), passed 8-12-91; Am. Ord. 1997-846, passed 5-12- 97)

CHAPTER 37: ADMINISTRATIVE PENALTIES

Section

§ 37.01 PURPOSE.

The City Council finds that there is a need for alternative methods of enforcing the city code. While criminal fines and penalties have been the most frequent enforcement mechanisms, there are certain negative consequences for both the city and the public. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative

violations. The criminal process does not always regard city code violations as important. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy which may be pursued for city code violations.

('72 Code, § 903:10) (Ord. 1998-881, passed 7-22-98)

§ 37.02 ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES.

This chapter governs administrative citations and civil penalties for violations of the city code.

('72 Code, § 903:20) (Ord. 1998-881, passed 7-22-98)

§ 37.03 ADMINISTRATIVE OFFENSES; SCHEDULE OF FINES AND FEES.

(A) A violation of any provision of the city code is an administrative offense, which may be subject to an administrative citation and civil penalties pursuant to this subchapter. Each day a violation exists constitutes a separate offense.

(B) An administrative offense may be subject to a civil penalty not exceeding $2,000.

(C) The City Council must adopt by resolution a schedule of recommended fines for offenses initiated by administration citation. The City Council is not bound by that schedule when a matter is appealed to it for administrative review.

(D) The City Council may adopt a schedule of fees to be paid to administrative hearing officers.

(E) The City Manager must adopt written procedures for administering the administrative citation program.

('72 Code, § 903:40) (Ord. 1998-881, passed 7-22-98)

§ 37.04 ADMINISTRATIVE CITATION.

(A) A person authorized to enforce provisions of the city code may issue an administrative citation upon belief that a code violation has occurred. The citation must be issued in person or by first class mail to the person responsible for the violation or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time, and nature of the offense, the identity of the person issuing the citation, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation.

(B) The person responsible for the violation must either pay the scheduled fine or request a hearing within 14 days after issuance of the citation. A hearing must be conducted within 30 days after a request or within 30 days after a responsible person fails to return the automatic stay agreement pursuant to § 37.05(F)(8). Hearings exceeding 30 days may be granted by the Administrative Enforcement Program Coordinator for good cause. Payment of the fine constitutes admission of the violation. A late payment fee of 10% of the scheduled fine amount will be imposed in accordance with § 37.08.

('72 Code, § 903:50) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2012-1136, passed 3-26-12)

§ 37.05 ADMINISTRATIVE HEARING - AUTOMATIC STAY.

(A) The City Council must periodically approve a list of persons, from which the City Manager or designated agent will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. A person who has been issued a citation has the right to request, no later than five days before the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the City Manager or designated agent. A subsequent request must be directed to the assigned hearing officer who will decide whether the hearing officer can fairly and objectively review the case. The person issuing the citation may request the removal of a hearing officer only if the hearing officer cannot fairly and objectively review the case. If such a finding is made, the officer must remove that officer from the case, and the City Manager or designated agent must assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by M.S. § 609.415. The hearing officer must not be an employee of the city. The City Manager or designated agent must establish a procedure for evaluating the competency of the hearing officers, including comments from citizens and city staff. These reports must be provided to the City Council.

(B) Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the subpoena is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of any witness. A person served with a subpoena may file an objection with the hearing officer promptly but no later than the time specified in the subpoena for compliance. The officer may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.

(C) Notice of the hearing must be served in person or by mail on the person responsible for the violation at least ten days in advance, unless a shorter time is accepted by all parties. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence do not apply. The hearing officer must record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including reliable hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(D) The hearing officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled fine, and to reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

(1) The duration of the violation;

(2) The frequency or recurrence of the violation;

(3) The seriousness of the violation;

(4) The history of the violation;

(5) The violator's conduct after issuance of the notice of hearing;

(6) The good faith effort by the violator to comply;

(7) The economic impact of the penalty on the violator;

(8) The impact of the violation upon the community; and

(9) Any other factors appropriate to a just result.

(E) The hearing officer may exercise discretion to impose a fine for more than one day of a continuing violation, but only upon a finding that the violation caused a serious threat of harm to the public health, safety, or welfare or that the accused intentionally and the unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.

(1) The failure to pay the fine or request a hearing within seven days after the citation, or the failure to attend the hearing, constitutes a waiver of the violator's rights to an administrative hearing and is an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of "good cause": death or incapacitating illness of the accused; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay.

(2) The decision of the hearing officer is final without any further right of administrative appeal, except for matters subject to administrative review under § 37.06. In a matter subject to administrative review under § 37.06, the hearing officer's decision may be appealed to the City Council by submitting a request in writing to the City Manager or designated agent within seven days after the hearing officer's decision.

(F) If a person who receives an administrative citation requests an administrative hearing, the Administrative Enforcement Program Coordinator will grant an automatic stay of the fine for one year if the following conditions are met:

(1) No same or similar code violations have occurred at the property within the previous 24 months.

(2) No code violations currently exist at the property as determined by city staff.

(3) The code violation does not constitute an immediate health or safety hazard.

(4) The responsible party agrees to allow city staff to enter all areas of the property for which the administrative citation was issued for purposes of inspecting the property to ensure compliance.

(5) The responsible party admits that the code violation(s) existed and agrees to have the administrative citation fine stayed for a period of one year from the date issued.

(6) If there are no same or similar code violations within one year, the Administrative Enforcement Program Coordinator will dismiss the administrative fine.

(7) If there are same or similar code violations within one year as determined by city staff, the stayed administrative citation fine will be re-imposed and the amount will be due and payable within 14 days.

(8) The responsible party must complete and return to City Hall the approved automatic stay agreement form within 14 days after receiving it from the Administrative Enforcement Program Coordinator. A responsible party who fails to return the signed agreement within the 14-day period will no longer be eligible to participate in the automatic stay process and an administrative hearing will then be scheduled.

(9) If the property for which the administrative citation was issued is sold to a new owner during the period of the automatic stay, all stayed fines will be dismissed.

(10) Automatic stays will not be granted for tobacco and alcohol compliance, false alarm or ruptured gas line citations.

('72 Code, § 903:60) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2012-1136, passed 3-26-12)

§ 37.06 ADMINISTRATIVE REVIEW.

(A) The hearing officer's decision in any of the following matters may be appealed by a party to the City Council for administrative review:

(1) An alleged failure to obtain a permit, license, or other approval from the City Council as required by an ordinance;

(2) An alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, which was granted by the City Council; and

(3) An alleged violation of regulations governing a person or entity, who has received a license granted by the City Council.

(B) The appeal must be heard by the City Council after notice served in person or by registered mail at least ten days in advance. The parties to the hearing must have an opportunity to present oral or written arguments regarding the hearing officer's decision.

(C) The City Council must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Council is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The Council's decision must be in writing.

(D) If the Council makes a finding of a violation, it may impose a civil penalty not exceeding $2,000 per day per violation, and may consider any or all of the factors contained in § 37.05(D). The Council may also reduce, stay, or waive a fine unconditionally or based on reasonable and appropriate conditions.

(E) In addition to imposing a civil penalty, the Council may suspend or revoke any city issued license, permit, or other approval associated with the violation, if the procedures in the city code have been followed. Any hearing required in the city code for such suspension or revocation is deemed satisfied by the hearing before the hearing officer with the right of appeal to the City Council.

('72 Code, § 903:70) (Ord. 1998-881, passed 7-22-98)

§ 37.07 JUDICIAL REVIEW.

An aggrieved party may obtain judicial review of the decision of the hearing officer or the City Council in accordance with state law.

('72 Code, § 903:80) (Ord. 1998-881, passed 7-22-98)

§ 37.08 RECOVERY OF CIVIL PENALTIES.

(A) If a civil penalty is not paid within the time specified, it constitutes:

(1) A personal obligation of the violator; and

(2) A lien upon the real property upon which the violation occurred if the property or improvements on the property were the subject of the violation and the property owner was found responsible for that violation.

(B) A lien may be assessed against the property and collected in the same manner as taxes. The lien may include the administrative and legal costs incurred by the city in connection with collecting the unpaid administrative penalty. Prior to assessing the lien against the property, the city must attempt to obtain voluntary payment of the administrative penalty and provide the property owner listed on the tax record with notice and an opportunity to be heard.

(C) A personal obligation may be collected by any appropriate legal means.

(D) A late payment fee of 10% of the fine will be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.

(E) During the time that a civil penalty remains unpaid, no city approval will be granted for a license, permit, or other city approval sought by the violator or for property under the violator's ownership or control.

(F) Failure to pay a fine is grounds for suspending, revoking, denying, or not renewing a license or permit associated with the violation.

('72 Code, § 903:90) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2009-1103, passed 9-8-09)

§ 37.09 CRIMINAL PENALTIES.

The following are misdemeanors, punishable in accordance with state law:

(A) Failure, without good cause, to pay a fine or request a hearing within 30 days after issuance of an administrative citation.

(B) Failure, without good cause, to appear at a hearing which was scheduled under § 37.05.

(C) Failure to pay a fine imposed by a hearing officer within 30 days after it was imposed, or such other time as may be established by the hearing officer, unless the matter is appealed under § 37.06.

(D) Failure to pay a fine imposed by the City Council within 30 days after it was imposed, or such other time as may be established by the City Council.

('72 Code, § 903:100) (Ord. 1998-881, passed 7-22-98)

§ 37.10 APPLICABLE LAWS.

Where differences occur between provisions of this chapter and other applicable code sections, this chapter applies.

('72 Code, § 903:110) (Ord. 1998-881, passed 7-22-98)

CHAPTER 38: CITY POLICIES

Section

GENERAL PROVISIONS

§ 38.01 CHARGES FOR SERVICES AND SUPPLIES.

The City Council may by resolution from time to time adopt and establish a schedule of rates for miscellaneous services provided by the city employees or for supplies or materials sold by the city. It is the responsibility of the Director of Finance to collect the charges and to allocate the monies collected to the proper fund.

('72 Code, § 220:10) (Ord. 1972-121(A), passed 8-28-72)

UNCLAIMED PROPERTY

§ 38.15 CUSTODY OF FOUND PROPERTY OTHER THAN BICYCLES AND ANIMALS.

The City Manager shall make provisions for receiving and safekeeping found property and money delivered to the City Manager and coming into the City Manager's possession in the course of municipal operations. A receipt shall be issued to the person delivering the property or money to the city. The property must be stored in a safe place and the money deposited with the Director of Finance in a special account for found money for a period of six months unless claimed by the true owner. It will then be subject to disposal as unclaimed property or money.

('72 Code, § 120:00)

§ 38.16 CLAIMS BY OWNER.

During the six-month period, the City Manager may deliver the property or order the money paid to the true owner upon proof of ownership satisfactory to the City Manager after ten days notice by mail to any person who has asserted a claim of ownership. No order for the disbursement of such money is to be made without the written order of the City Manager. If ownership cannot be determined to the City Manager's satisfaction, the City Manager may refuse to deliver the property or order the payment of the money to anyone until ordered to do so by a court.

('72 Code, § 120:05)

§ 38.17 CLAIM BY FINDER.

If the true owner does not claim the property or money during the six-month period, the City Manager may deliver the property or order the money to be paid to the person who delivered it to the City Manager if at the time of delivery the person indicated in writing that the person wished to assert a claim to the property or money as a finder.

('72 Code, § 120:10)

§ 38.18 TRANSFER TO GENERAL FUND.

If any such money is not claimed by the true owner or finder within the six-month period, the City Manager must then notify the City Clerk and the money must then be transferred to the general fund of the city.

('72 Code, § 120:15)

§ 38.19 SALE OR APPROPRIATION OF UNCLAIMED PROPERTY.

After the six-month period, property not delivered to the true owner or finder must be sold by the City Manager at a public auction or appropriated to the use of the city. The City Manager or designee must give ten days published notice of the auction in the official newspaper. The notice must describe the article to be disposed of and announce the date, time and place of the auction. Instead of being sold at auction, any article or property not delivered to the true owner or finder may be appropriated to the use of the city by any department in need thereof upon approval of such appropriation by the Council.

('72 Code, § 120:20)

§ 38.20 DISPOSITION OF PROCEEDS.

After the auction has been completed, the City Manager must remit the proceeds thereof to the Director of Finance for deposit in the general fund. Property offered for sale but not sold and not suitable for appropriation to the use of the city is deemed worthless and is to be disposed of in such manner as the City Manager directs.

('72 Code, § 120:25)

§ 38.21 CLAIM BY OWNER AFTER AUCTION.

The true owner of property sold at auction hereunder must, upon application to the City Clerk within six months of the auction and upon satisfactory proof of ownership, be paid the sale price from the general fund.

('72 Code, § 120:30)

§ 38.22 SUMMARY DISPOSAL.

The City Manager may without notice and in such manner as the City Manager determines to be in the public interest dispose summarily of any property coming into the City Manager's possession which the City Manager determines to be dangerous or perishable. The City Manager shall make a record of the pertinent facts of the receipt and disposal of the property and must remit any funds to the Director of Finance.

('72 Code, § 120:35)

CHAPTER 39: DEPARTMENT OF COMMUNITY DEVELOPMENT

Section

§ 39.01 ESTABLISHMENT.

The Department of Planning and Development, which was previously established by Ordinance 2001-945, is renamed the Department of Community Development. The Department and all of its employees operate under the jurisdiction of the City Manager and Department Director.

(Ord. 2001-945, passed 1-8-01; Am. Ord. 2002-964, passed 2-25-02)

§ 39.02 DUTIES.

The Community Development Department, supervised by the Department Director, responsible to the City Manager, is responsible for comprehensive planning, current planning, zoning administration, neighborhood and economic development, general nuisance, zoning, health code enforcement, and building safety and building maintenance inspections.

(Ord. 2001-945, passed 1-8-01; Am. Ord. 2002-964, passed 2-25-02; Am. Ord. 2009-1106, passed 10-5-09)

CHAPTER 40: OPERATIONS AND MAINTENANCE DEPARTMENT

Section

§ 40.01 ESTABLISHMENT.

There is hereby created an Operations and Maintenance Department. The Department and all of its employees operate under the jurisdiction of the City Manager and Department Director.

(Ord. 2001-946, passed 1-8-01; Am. Ord. 2009-1106, passed 10-5-09)

§ 40.02 DUTIES.

The Operations and Maintenance Department, supervised by the Department Director, who shall also serve as the city's Director of Public Works and be responsible to the City Manager, is responsible for planning and managing all programs for the operation and maintenance of all city transportation facilities, park facilities, forestry system, water utility, sanitary sewer utility, recycling utility, storm sewer utility, street and signal lighting utility, general public and recreational buildings, vehicles/equipment, design and construction of public improvements, and traffic engineering.

(Ord. 2001-946, passed 1-8-01; Am. Ord. 2009-1106, passed 10-5-09)

CHAPTER 41: BACKGROUND CHECKS

Section

§ 41.01 PURPOSE.

The purpose and intent of this chapter is to establish regulations that will allow law enforcement personnel access to Minnesota's computerized criminal history information for purposes of conducting criminal history background checks for prospective tenants of rental properties in the city and for prospective employment and volunteer positions described in § 41.02.

(Ord. 2010-1115, passed 6-7-10)

§ 41.02 APPLICANTS FOR CITY EMPLOYMENT/VOLUNTEERS/COMMITTEES.

Related to criminal history employment background investigations, the Police Department is authorized, as the exclusive entity within the city, to conduct a criminal history background investigation on the applicants for the following employment and volunteer positions in the city:

(A) Administration;

(B) Community development;

(C) Municipal utilities;

(D) Finance (including IT);

(E) Parks and recreation;

(F) Public safety;

(G) Operations and maintenance;

(H) Any regular part-time, full-time, and seasonal employees of the city and other positions that will be working with cash, including volunteers that work with children and/or vulnerable adults;

(I) Any groups/individuals that will have access to PD facility, i.e., Citizen's Academy attendees, multi-cultural committee, etc.

(Ord. 2010-1115, passed 6-7-10)

§ 41.03 ACCESS TO DATA.

(A) In conducting the criminal history background investigation in order to screen employment applicants, the Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehension computerized criminal history information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the computerized criminal history data may be released by the Police Department to the hiring authority, including the City Council, the City Administrator, or other city staff involved in the hiring process.

(B) Before the investigation is undertaken, the applicant must give written consent for the Police Department to undertake the investigation. The written consent must fully comply with the provisions of the Minnesota Government Data Practices Act, M.S. §§ 13.01 et. seq., regarding the collection, maintenance, and use of the information. In making decisions with respect to employment, the city must comply with the provisions in M.S. §§ 364.01 et. seq. relating to the rehabilitation of criminal offenders.

(Ord. 2010-1115, passed 6-7-10)

§ 41.04 RENTAL PROPERTIES.

The Police Department is authorized to do criminal history background checks on prospective tenants of rental property in the city.

(Ord. 2010-1115, passed 6-7-10)

TITLE VII: TRAFFIC CODE

Chapter

CHAPTER 70: GENERAL PROVISIONS

Section

§ 70.01 INTENT OF TRAFFIC CODE; CONFORMANCE WITH STATE LAW.

The City Council hereby expressly states that its legislative intent is to adopt the provisions of its traffic control ordinances so they will be identical to or in substantial agreement with state law as to all matters of wording and meaning with respect to traffic control and to be identical with the state law in all matters of penalty for violations thereof as required by the authorization therefor by state statute and as incumbent upon the city by the decision of the Supreme Court of the State of Minnesota in the Hoben case. Violations are referred to throughout this code as "penal offenses" or "petty offenses."

('72 Code, § 1105:00(1))

§ 70.02 REFERENCES TO VIOLATIONS.

Violations of the state traffic code are referred to as "misdemeanors" or "petty misdemeanors" as required by state law, both in this code and in the state law. If reference is made in this code to "misdemeanor" when the clear intent is a reference to a violation of this code, "misdemeanor" shall be construed to mean "penal offense," or "petty offense," as the case may be.

('72 Code, § 1105:00(2))

§ 70.03 REVOCATION OF LICENSES.

Violation by a licensee of any provision of this code or state law regulating, prescribing conditions or establishing requirements relative to licenses held by such a licensee shall be grounds for revocation of the license.

('72 Code, § 1110:00)

CHAPTER 71: TRAFFIC RULES

Section

GENERAL PROVISIONS

§ 71.01 HIGHWAY TRAFFIC REGULATION ACT ADOPTED.

The regulatory provision of M.S. Chapter 169, as amended, including all extra Session Laws, are hereby adopted as a traffic ordinance regulating the use of highways, streets, and alleys within the city and three copies of said Act are on file in the city office and marked "City of Brooklyn Park - Official Copy." Said Highway Traffic Regulation Act is hereby incorporated in and made a part of this code as completely as if set out herein in full.

('72 Code, § 700:00) (Ord. 1971-31(A), passed 10-26-71)

§ 71.02 UNREASONABLE ACCELERATION.

(A) ***UNREASONABLE ACCELERATION OF A MOTOR VEHICLE*** is hereby defined as acceleration which unnecessarily breaks traction between a tire or tires and the driving surface, thereby causing a prolonged squealing or screeching sound. Prolonged squealing or screeching sound shall constitute prima facie evidence of unreasonable acceleration.

(B) Any act of unreasonable acceleration as hereinabove defined by any motor vehicle upon any street, road, parking lot or driving way, private or public, within the corporate limits of Brooklyn Park is hereby declared to be a public nuisance and is prohibited.

('72 Code, §§ 720:00 - 720:05) Penalty, see § 10.99

§ 71.03 USE OF ENGINE OR TRANSMISSION BRAKING DEVICES.

(A) *Findings*. The City Council of the City of Brooklyn Park finds that the use of engine or transmission braking devices or methods (a/k/a "jake braking" or "dynamic braking") within the city limits creates unusual and excessive noise that unreasonably disturbs and annoys residents. The prohibition of such devices and methods is necessary to protect the health, safety and public welfare.

(B) *Prohibition*. No person may slow a vehicle by a device, method or practice known as engine braking or transmission braking, also referred to as "jake braking" or "dynamic braking," whereby rapid downshifting of a vehicle's engine or a compression release device is used in lieu of applying a vehicle's wheel brakes, causing loud noises to emit from the vehicle's engine and exhaust system. Such braking by any motor vehicle on any public highway, street, parking lot or alley within the City of Brooklyn Park is declared to be a public nuisance and is prohibited.

(C) *Emergency vehicles*. The foregoing provision does not apply to emergency vehicles.

(Ord. 2000-931, passed 9-5-00) Penalty, see § 10.99

LICENSES

§ 71.15 DRIVER'S LICENSE IN POSSESSION.

Every person must have his or her driver's license in his or her immediate possession at all times when operating a motor vehicle and must display the same upon the demand of a magistrate, peace officer, or by an officer authorized by law to enforce the laws relating to the operation of motor vehicles on public streets and highways. Licensee shall upon the request of any such officer write his or her name in the presence of such officer in order that the identity of the licensee may be determined.

('72 Code, § 705:00) Penalty, see § 10.99

§ 71.16 NO LICENSE.

No person whose driver's license or driving privileges has been canceled, suspended, or revoked as provided in Minnesota Statutes shall operate any motor vehicle, the operation of which requires a driver's license, upon the streets or highways of Brooklyn Park while such license or privilege is canceled, suspended or revoked.

('72 Code, § 705:05) Penalty, see § 10.99

Cross-reference:

Revocation of licenses, see § 110.20

OPERATION ON PRIVATE PROPERTY

§ 71.25 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PRIVATE PROPERTY. Property owned by a person, firm, voluntary association or corporation other than a government body and is not generally open for use by the public.

PUBLIC PROPERTY. Property that may be used by all the public subject to reasonable regulations by a governmental body, but does not include public streets and highways.

SEMI-PUBLIC PROPERTY. Private property generally open for use by the public but not owned or maintained by a governmental body. Such property includes without limitation church property, school property, shopping centers, and all other

property generally used by patrons of a commercial or private business establishment, but not including private streets in residential areas.

VEHICLE. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

('72 Code, § 740:00) (Ord. 1984-444(A), passed 1-9-84)

§ 71.26 PRIVATE PROPERTY REGULATIONS.

It is unlawful for a person to operate or permit to be operated any vehicle across or upon any private property, other than driveway portions designated for vehicular use, without the written or oral permission of the owner or occupant or lessee thereof. Written permission may be given by a posted notice of any kind or description that the owner, occupant or lessee prefers as long as it specifies the kind of vehicles allowed.

('72 Code, § 740:05) (Ord. 1984-444(A), passed 1-9-84) Penalty, see § 10.99

§ 71.27 PUBLIC PROPERTY REGULATIONS.

It is unlawful for a person to operate or permit to be operated any vehicle upon public property other than an area designated for vehicular use or upon a path or area designed by appropriate signs permitting such use.

('72 Code, § 740:10) (Ord. 1984-444(A), passed 1-9-84) Penalty, see § 10.99

§ 71.28 SEMI-PUBLIC PROPERTY REGULATIONS.

It is unlawful for a person to operate or permit to be operated any vehicle upon a portion of semi-public property which is not held open to the public for vehicular use.

('72 Code, § 740:15) (Ord. 1984-444(A), passed 1-9-84) Penalty, see § 10.99

§ 71.29 EXCEPTIONS.

The provisions of this subchapter do not apply to emergency vehicles, vehicles used by governmental bodies driving on such property with the consent of the owner or the owner's agent or a person in the lawful possession of such real property.

('72 Code, § 740:20) (Ord. 1984-444(A), passed 1-9-84)

§ 71.30 SIGNS.

It is unlawful for a person to post, mutilate, or remove any notice or sign provided in this chapter upon lands over which the person had no right, title, interest or license.

('72 Code, § 740:25) (Ord. 1984-444(A), passed 1-9-84) Penalty, see § 10.99

WEIGHT RESTRICTIONS

§ 71.40 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

SINGLE AXLE. All wheels whose centers may be included within two parallel transverse vertical planes 40 inches apart.

TRUCK. Every motor vehicle designed, used or maintained primarily for the transportation of property.

VEHICLE. All motor vehicles, house trailers and trailers, of all kinds or any objects or contrivances being moved on wheels of any kind, but excluding vehicles of public bodies.

('72 Code, § 735:00) (Am. Ord. 1993-714, passed 2-8-93)

§ 71.41 WEIGHT RESTRICTIONS.

(A) It is unlawful to operate a vehicle or combination of vehicles equipped with pneumatic tires upon the streets or highways of Brooklyn Park when the gross weight of any single wheel exceeds 9,000 pounds, or when the gross weight of any single axle exceeds 18,000 pounds. The City Engineer may prohibit the operation of vehicles upon any public streets or impose further restrictions as to the weight of vehicles to be operated upon the street, whenever the street by reason of deterioration, rain, snow, or other climate conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited, or the permissible weights thereon are reduced.

(B) The City Engineer is authorized to erect and maintain or cause to be erected and maintained, signs plainly indicating the prohibition or restriction at each end of that portion of any street affected thereby, and the prohibition or restriction shall not be effective unless and until the signs are erected and maintained.

('72 Code, § 735:05) Penalty, see § 10.99

§ 71.42 NO PNEUMATIC TIRES.

A vehicle or combination of vehicles not equipped with pneumatic tires shall be governed by the foregoing provisions, except that the gross weight limitations shall be reduced by 40%.

('72 Code, § 735:10)

§ 71.43 WEIGHING.

Any police officer or duly authorized person having reason to believe that the weight of a vehicle and load is unlawful, is authorized to require the driver to stop and submit to a weighing of the same, either by means of a portable or stationary scale and may require that such vehicles be driven to the nearest public scale. For purpose of weighing, vehicles must not be taken a greater distance than five miles, except in such cases where scales of sufficient capacity are not available within such limits.

('72 Code, § 735:15) (Am. Ord. 1988-591(A), passed 2-22-88) Penalty, see § 10.99

§ 71.44 LOAD REMOVAL.

An officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place and remain standing until a portion of the load is removed as may be necessary to reduce the gross weight to a limit as permitted under this subchapter. All material so unloaded shall be cared for by the owner or driver of the vehicle at the risk of the owner or driver.

('72 Code, § 735:20) Penalty, see § 10.99

§ 71.45 EMERGENCY WAIVER.

In case of emergency or necessity a person may make written application to the City Engineer for a waiver of a provision of this chapter or any regulation imposed hereunder and the Engineer may in the Engineer's sound discretion grant such waivers under terms and conditions as the Engineer may deem advisable.

('72 Code, § 735:25)

§ 71.46 TRUCK ROUTES.

It is unlawful to operate a vehicle or combination of vehicles upon the streets or highways under the jurisdiction of Brooklyn Park which exceeds the limits established in § 71.41 of this chapter, except on such routes as may be designated as truck routes and identified as such by signs and markings to that effect.

('72 Code, § 735:30) (Am. Ord. 1982-386(A), passed 4-12-82) Penalty, see § 10.99

§ 71.47 RESOLUTION.

Truck routes are established by resolution to be adopted by the City Council and the resolution must designate the route and the weight restrictions applicable on the streets.

('72 Code, § 735:35) (Am. Ord. 1982-386(A), passed 4-12-82)

§ 71.48 SPECIAL PERMITS.

Vehicles prohibited by § 71.46 of this chapter may be driven over other routes by special permit issued under authority of the City Council or for delivery to homes or businesses in which event the vehicle shall be driven over the shortest possible route.

('72 Code, § 735:40)

§ 71.49 PERMIT FEES.

Under the provisions of this subchapter, other ordinances and certain state statutes, the City Engineer has been given the responsibility for issuing certain transportation permits for oversize and/or overweight vehicles that wish to operate on city streets. The processing of the permits requires an expenditure of time by engineering personnel and other administrative costs in processing these permits. The City Council may establish from time to time a permit fee for these services.

('72 Code, § 735:45) (Am. Ord. 1986-541(A), passed 8-18-86)

§ 71.50 TRUCK TRAFFIC PROHIBITION.

The City Council may, by resolution duly adopted, authorize that trucks over a specified gross vehicle weight, be prohibited from operating on certain streets or portions of streets. The restrictions established by City Council resolution are not to become effective until the specified streets are posted with clearly visible and appropriate signs which inform drivers of vehicles of the restrictions. Any truck restrictions established under this provision do not apply to city maintenance trucks nor to any truck making a delivery to, or a pickup from, any lot or premises along the street.

('72 Code, § 735:50) (Am. Ord. 1993-714, passed 2-8-93)

CHAPTER 72: STOPPING, STANDING, AND PARKING

Section

§ 72.01 PARKING PROHIBITED.

All on-street parking of vehicles is prohibited in this municipality except in compliance with this chapter.

('72 Code, § 725:00) (Am. Ord. 1975-210(A), passed 10-27-75) Penalty, see § 10.99

§ 72.02 CLOSE TO CURB.

It is unlawful to stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right hand wheels of the vehicle within 12 inches of the curb or edge of the roadway.

('72 Code, § 725:03) (Am. Ord. 1993-720, passed 5-24-93) Penalty, see § 10.99

§ 72.03 LIGHTS.

(A) If a vehicle is lawfully parked at nighttime upon a street within a business or residence district as defined in purpose statement of zoning districts, no lights need to be displayed upon the parked vehicle.

(B) If a vehicle is parked upon a street or highway outside of a business or residence district during the hours between one-half hour after sunset and one-half hour before sunrise, the vehicle must be equipped with one or more lamps which must exhibit a white light on the roadway side visible from a distance of 500 feet to the front of the vehicle and a red light visible from a distance of 500 feet to the rear.

(C) A lighted headlamp upon a parked vehicle must be depressed or dimmed.

('72 Code, § 725:15) Penalty, see § 10.99

§ 72.04 STOPPING AND STANDING PROHIBITED.

It is unlawful to stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the places described as follows:

(A) On a sidewalk.

(B) In front of a public or private driveway or directly across therefrom.

(C) Within an intersection.

(D) Within ten feet of a fire hydrant.

(E) On a crosswalk.

(F) Within 20 feet of a crosswalk at an intersection.

(G) Within 30 feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway.

(H) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the City Engineer has indicated a different length by signs or markings.

(I) Within 50 feet of the nearest rail of a railroad crossing.

(J) Within 20 feet of the driveway entrance of any fire station and on the side of a street opposite the entrance of any fire station within 75 feet of said entrance.

(K) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic.

(L) On a roadway side of any vehicle stopped or parked at the edge or curb of a street.

(M) Upon any bridge or other elevated structure upon a highway or within a highway tunnel or underpass.

(N) At any place where official signs prohibit stopping.

(O) On any boulevards.

(P) Within 20 feet (either side) of any mailbox located on a public right-of-way, between the hours of 8:00 a.m. until 6:00 p.m. Monday through Saturday. Sundays are excepted.

('72 Code, § 725:18) (Am. Ord. 1980-320(A), passed 4-28-80; Am. Ord. 1984-467(A), passed 10-8-84) Penalty, see § 10.99

§ 72.05 UNAUTHORIZED MOVING OF PARKED CAR.

It is unlawful to move a vehicle not lawfully under the person's control into any prohibited area or away from a curb such distance as is unlawful.

('72 Code, § 725:21) Penalty, see § 10.99

§ 72.06 OBSTRUCT TRAFFIC.

It is unlawful to park a vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic.

('72 Code, § 725:24) Penalty, see § 10.99

§ 72.07 ALLEYS.

It is unlawful to park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic, and it is unlawful to stop, stand, or park a vehicle within an alley, in such position as to block the driveway entrance to any abutting property.

('72 Code, § 725:27) Penalty, see § 10.99

§ 72.08 ALL NIGHT.

It is unlawful, except for a physician on an emergency call, to park a vehicle on a street between the hours of 2:00 a.m. and 5:00 a.m. of any day from October 15 in one calendar year until April 15 in the following calendar year.

('72 Code, § 725:30) (Am. Ord. 1983-424(A), passed 5-23-83) Penalty, see § 10.99

§ 72.09 24-HOUR LIMITATIONS.

It is unlawful to park a vehicle on a street in the city for a period longer than 24 consecutive hours.

('72 Code, § 725:31) (Ord. 1983-424(A), passed 5-23-83) Penalty, see § 10.99

§ 72.10 COMMERCIAL VEHICLE, EQUIPMENT, AND TRAILER PARKING.

It is unlawful to park or store on any public street, an open-bed or enclosed trailer, boat trailer, camper trailer, utility trailer, or any other type of trailer, farm vehicle or farm equipment, construction materials or equipment, or commercial vehicle.

(A) (1) For the purpose of this section, a ***COMMERCIAL VEHICLE*** is defined as:

(a) Any vehicle with Minnesota license plates carrying a designation of "BY" (bus, except as provided below), "CZ" (commercial zone truck); or

(b) Any vehicle with Minnesota license plates carrying a designation of "Y" (truck with Minnesota base plate) or "T" (farm truck), and displaying on the lower right corner of the license plate any gross vehicle weight designation of "G" through "T"; or

(c) Any vehicle with a gross vehicle weight in excess of 12,000 pounds except passenger-type trucks and vans; or

(d) Vehicles meeting the definition of "commercial vehicles" in § 152.008 of the City Code.

(2) Commercial vehicles described above shall include but are not limited to buses, dump trucks, tow trucks, truck-tractors, step vans, cube vans, delivery trucks and the like.

(B) Open-bed or enclosed trailers, boat trailers, camper trailers, utility trailers, or any other type of trailers, farm vehicles, farm equipment, construction equipment, and commercial vehicles are subject to all other provisions of this section; however, the prohibitions of this section do not apply to the following:

(1) If such trailers, vehicles, or equipment are actually in the process of being loaded or unloaded, up to a maximum time period of 48 hours.

(2) Commercial vehicles that are directly ancillary to construction and parked within 1,000 feet of the related construction site.

(3) Vehicles licensed with disability plates, or displaying a disability parking certificate.

(4) One-ton passenger vans used solely for transporting persons.

(5) Vehicles with Minnesota license plates carrying a designation of "SB" (school bus).

('72 Code, § 725:32) (Ord. 1993-720, passed 5-24-93; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2009-1100, passed 5-26-09; Am. Ord. 2010-1116, passed 7-6-10) Penalty, see § 10.99

§ 72.11 SNOW.

It is unlawful, except for a physician on an emergency call, to park or leave a vehicle on a street when there is more than two inches of snow on the street and snow is falling or has fallen within the previous 24 hours or snow is blowing or has been blowing within the previous 24 hours.

('72 Code, § 725:33) Penalty, see § 10.99

§ 72.12 FOR SALE OR WASHING.

It is unlawful to park a vehicle upon a roadway for the principal purpose of displaying the vehicle for sale, washing, greasing or repairing the vehicle except repairs necessitated by an emergency.

('72 Code, § 725:36) Penalty, see § 10.99

§ 72.13 SCHOOLS.

(A) The City Engineer is hereby authorized to erect signs indicating no parking upon either or both sides of a street adjacent to school property when such parking would, in the City Engineer's opinion, interfere with traffic or create a hazardous situation.

(B) If official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, it is unlawful to park a vehicle in any such designated place.

('72 Code, § 725:39) Penalty, see § 10.99

§ 72.14 NARROW STREETS.

(A) The City Engineer is authorized to erect signs indicating no parking upon any street when the width of the roadway does not exceed 20 feet, or upon one side of a street as indicated by such signs when the width of the roadway does not exceed 30 feet or for snow removal.

(B) If official signs prohibiting parking are erected as authorized herein, it is unlawful to park a vehicle upon any such street in violation of any such sign.

('72 Code, § 725:42) Penalty, see § 10.99

§ 72.15 ONE-WAY STREETS.

In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, it is unlawful to stand or park a vehicle upon the left-hand side of the one-way roadway unless signs are erected to permit such standing or parking. The City Engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof.

('72 Code, § 725:45) Penalty, see § 10.99

§ 72.16 CONGESTED PLACES.

(A) The City Engineer is authorized to determine and designate by proper signs places not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

(B) If official signs are erected at hazardous or congested places as authorized herein it is unlawful to stop, stand, or park a vehicle in any such designated place.

('72 Code, § 725:48) Penalty, see § 10.99

§ 72.17 PARKING FOR THE HANDICAPPED.

It is unlawful to park in, obstruct or occupy with a motor vehicle, any parking space, on public or private property, designated or signed as handicapped parking, unless the vehicle prominently displays an insignia or certificate issued by the Department of Motor Vehicles pursuant to M.S. § 169.345, Subd. 3, and the vehicle is being used by a physically handicapped person, as defined in M.S. § 169.345, Subd. 2. Signs designating handicapped parking spaces shall be presumed to have been placed according to law, unless the contrary is established by competent evidence. Violation of this provision is a petty offense. Motor vehicles found in violation of this section may be ordered removed by a member of the Police Department under the procedures stated in §§ 72.19 through 72.21.

('72 Code, § 725:50) (Ord. 1977-238(A), passed 2-28-77) Penalty, see § 10.99

§ 72.18 ILLEGAL PARKING.

In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, may constitute in evidence an inference that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

('72 Code, § 725:51) (Am. Ord. 1975-210(A), passed 10-27-75)

§ 72.19 IMPOUND VEHICLES.

Members of the Police Department are authorized to remove, or cause to be removed, a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the Police Department, or otherwise maintained by this city under the circumstances set forth as follows:

(A) When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube, tunnel or underpass where such vehicle constitutes an obstruction to traffic.

(B) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody and removal.

(C) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a hazard or obstruction to the normal movement of traffic, or snow plowing.

('72 Code, § 725:54)

§ 72.20 NOTICE TO OWNER.

If an officer removes a vehicle from a street as authorized in this chapter and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, the officer must immediately give or cause to be given notice in writing to the owner of the fact of removal and the reasons therefor and of the place to which the vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of the notice must be given to the proprietor of the garage.

('72 Code, § 725:57)

§ 72.21 OWNER UNKNOWN.

If an officer removes a vehicle from a street under this chapter and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three days, then and in that event the officer must immediately send or cause to be sent written report of removal by mail to the State Department whose duty it is to register motor vehicles, and must file a copy of the notice with the proprietor of any public garage in which the vehicle may be stored. Such notice must include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal, and name of the garage or place where the vehicle is stored.

('72 Code, § 725:60)

CHAPTER 73: MOTORCYCLES, BICYCLES, AND SNOWMOBILES

Section

Motor Scooters and Motorcycles

Bicycles

Snowmobiles

Go-Karts

MOTOR SCOOTERS AND MOTORCYCLES

§ 73.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MOTOR SCOOTER and ***MOTORCYCLE.*** Every vehicle or device which is self-propelled, which is not moved by human power, which does not derive its power from overhead wires, and is not used exclusively upon stationary rails or tracks, and, in, upon, or by which any person or property may be drawn upon an alley, street or highway, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including bicycles with motor attached, but excluding a farm tractor.

('72 Code, § 715:00)

§ 73.02 OPERATION OF MOTOR SCOOTERS AND MOTORCYCLES.

It is unlawful to operate a motor scooter or motorcycle within this municipality while doing any of the acts prohibited in the divisions which follow:

(A) It is unlawful to allow any passenger to ride on the vehicle, unless it is equipped for more than one rider.

(B) It is unlawful to operate a vehicle while standing on same or perform any trick riding or operate in any manner other than in a customary manner for operating a vehicle.

(C) It is unlawful to operate a vehicle upon any sidewalk or upon any private property without the express consent of the owner.

('72 Code, § 715:05) Penalty, see § 73.99

§ 73.03 OBEDIENCE TO TRAFFIC REGULATIONS.

A person operating a motor scooter or motorcycle within this municipality must observe all traffic rules and regulations applicable thereto, must turn only at intersections, signal for all turns, ride at the extreme right hand side of the street or highway, and must pass to the left when overtaking other vehicles and pedestrians that are slower moving.

('72 Code, § 715:10) Penalty, see § 73.99

BICYCLES

§ 73.15 REGISTRATION.

It is unlawful to ride a bicycle upon a street, sidewalk, highway or other public property in the city unless the bicycle is registered with the city prior to March 1, 1977, or is registered with the state on or after that date.

('72 Code, § 405:01) (Ord. 1979-285(A), passed 3-12-79) Penalty, see § 73.99

§ 73.16 BICYCLE RENTALS.

It is unlawful for a rental agency to rent or offer any bicycle for rent unless the bicycle is registered with the State of Minnesota pursuant to M.S. Chapter 168C, and a license is attached thereto and the bicycle is properly equipped, in good mechanical condition and equipped with adequate brakes.

('72 Code, § 405:40) (Am. Ord. 1979-285(A), passed 3-12-79) Penalty, see § 73.99

§ 73.17 IMPOUNDING OF BICYCLES.

If an unregistered bicycle is found unattended on any public property, street or alley, the bicycle is deemed to have been operated in violation of this subchapter and is to be impounded by the Police Department. The impounded bicycle may be surrendered to the owner thereof upon satisfactory proof of ownership and registration of the bicycle with the State of Minnesota.

('72 Code, § 405:45) (Am. Ord. 1979-285(A), passed 3-12-79)

§ 73.18 SALE OF IMPOUNDED BICYCLES OR FOUND PROPERTY.

At the expiration of 60 days after impounding or after property has been found, any property which has not been claimed may be sold at public auction or at private sale. If sold at public auction, notice containing a description of any property to be sold shall be published in the official newspaper at least ten days prior to the auction sale. If the City Manager determines that it is in the best interest of the city to dispose of the property at a private sale, the City Manager must solicit at least two bids for the property and establish the other terms of sale.

('72 Code, § 405:50) (Am. Ord. 1986-531(A), passed 6-9-86)

§ 73.30 INTENT.

It is the intent of this subchapter to supplement the laws of the State of Minnesota, M.S. §§ 84.81 through 84.88, and M.S. Chapters 168 through 171, with respect to the operation of snowmobiles. This subchapter is not intended to allow what the state statutes prohibit nor to prohibit what the state statutes expressly allow.

('72 Code, § 730:00)

§ 73.31 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OPERATE. To ride in or on and control the operation of a snowmobile.

OPERATOR. Every person who operates or is in actual physical control of a snowmobile.

PERSON. An individual, partnership, corporation, the state and its agencies and subdivisions, and any body of persons, whether incorporated or not.

ROADWAY. That portion of a highway improved, designed or ordinarily used for vehicular traffic.

SNOWMOBILE. A self-propelled vehicle designed for travel on snow or ice steered by skis or runners.

('72 Code, § 730:05)

§ 73.32 OPERATION ON CITY STREETS, HIGHWAYS OR PUBLIC LANDS.

It is unlawful to operate a snowmobile upon the roadway, public boulevard or on any public lands within the City of Brooklyn Park.

('72 Code, § 730:10) (Am. Ord. 1999-912, passed 10-25-99; Am. Ord. 2001-959, passed 11-13-01) Penalty, see § 73.99

§§ 73.33 to 73.37 [Reserved].

§ 73.38 OPERATION OF SNOWMOBILES; EXCEPTIONS.

(A) *Operation on private property.* It is unlawful for a person to operate a snowmobile on private property of another without permission of the owner of the property. It is a sufficient defense to the prosecution for violation of this division that the defendant has permission in writing from the owner or lawful occupant of the land.

(B) *Operation on publicly owned lands.* It is unlawful for a person to operate a snowmobile on publicly owned land, including schools, park property, playgrounds and recreation areas, except where permitted by § 73.32 and division (E) of this section.

(C) *Noise.* It is unlawful for a person to operate a snowmobile in a manner so as to create a loud, unnecessary or unusual noise which disturbs, annoys, or interferes with the peace and quiet of other persons.

(D) *Unattended snowmobiles.* It is unlawful for the owner or operator to leave or allow a snowmobile to be or remain unattended on public property.

(E) *Exception.*

(1) Notwithstanding the provisions of division (B) of this section, the Director of Recreation and Park shall have the authority to supervise and regulate events or programs in connection with events conducted by the City's Recreation and Park Department in which snowmobiles are used.

(2) The Council upon recommendation of the Recreation and Park Department may designate park areas or publicly owned property where snowmobile operations will not interfere with the peace and quiet of the neighborhood. The Council may establish rules and regulations which will provide a location on park or publicly owned property which will provide recreational facilities for snowmobile users. The Council may, from time to time, by resolution designate city park or public areas deemed available for such use and establish rules and regulations compatible with the site and the use of abutting properties.

('72 Code, §§ 730:40 - 730:65) (Am. Ord. 1972-117(A), passed 8- 14-72; Am. Ord. 1999-912, passed 10-25-99; Am. Ord. 2001-959, passed 11-13-01) Penalty, see § 73.99

§ 73.39 PROHIBITION FOR UNPROTECTED AND PROTECTED ANIMALS.

M.S. § 97B.091 is adopted as a city ordinance and is incorporated in and made a part of this subchapter as completely as if set out herein in full.

('72 Code, § 730:70) (Am. Ord. 1999-912, passed 10-25-99) Penalty, see § 73.99

§ 73.40 PENALTY.

A person registered as owner of a snowmobile may be fined or imprisoned for committing a penal offense, or both, if a snowmobile bearing that person's registration number is operated contrary to the provisions of M.S. §§ 84.81 to 84.88, M.S. § 97B.091 or of §§ 73.30 through 73.39, both inclusive, of this code. The registered owner may not be so fined if the snowmobile was reported as stolen to the Commissioner or a law enforcement agency at the time of the alleged unlawful act, or if the registered owner demonstrates that the snowmobile either was stolen or was not in use at the time of the alleged unlawful act, or if the registered owner furnishes to law enforcement officers upon request the identity of the person in actual physical control of the snowmobile at the time of such violation. The provisions of this subdivision do not apply to a person who rents or leases a snowmobile if the person keeps a record of the name and address of the person or persons renting or leasing the snowmobile, the registration number thereof, the departure date and time, and expected time of return thereof. The record must be preserved for at least six months and is prima facie evidence that the person named therein was the operator thereof at the time it was operated contrary to M.S. §§ 84.81 to 84.88, M.S. § 97B.091 or of §§ 73.30 through 73.39 of this code. The provisions of this subdivision do not prohibit or limit the prosecution of a snowmobile operator for violating any of the sections referred to in this division.

('72 Code, § 730:75) (Am. Ord. 1983-440(A), passed 11-21-83; Am. Ord. 1999-912, passed 10-25-99)

GO-KARTS

§ 73.50 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

GO-KART. Every self-propelled device or vehicle in, upon or by which any person is or may be transported or drawn upon a highway or natural terrain or designed to travel on wheels in contact with the ground, except automobiles, trucks, motor scooters, motorcycles, snowmobiles, and devices or vehicles moved by human power.

OPERATE. To ride in or on and control the operation of a go-kart.

OPERATOR. Every person who operates or is in actual physical control of a go-kart.

PERSON. An individual, partnership, corporation, the state and its agencies and subdivisions, and any body of persons, whether incorporated or not.

ROADWAY. That portion of a highway improved, designed or ordinarily used for vehicular traffic.

('72 Code, § 710:00)

§ 73.51 OPERATION ON CITY ROADWAYS PROHIBITED.

It is unlawful for a person to operate a go-kart upon the roadway of any street or highway within the City of Brooklyn Park.

('72 Code, § 710:05) Penalty, see § 73.99

§ 73.99 PENALTY.

(A) A person who violates any provision of this chapter for which no penalty is otherwise provided is subject to the penalty provided in § 10.99.

(B) A person who violates a provision of M.S. §§ 84.81 to 84.88 or §§ 73.30 through 73.39 of this chapter or any regulation of the Commissioner of Natural Resources or of the Commissioner of Public Safety promulgated pursuant to law is guilty of a penal offense and is to be punished according to § 10.99 of this code.

TITLE IX: GENERAL REGULATIONS

Chapter

CHAPTER 90: ABANDONED PROPERTY

Section

General Provisions

Abandoned Vehicles

GENERAL PROVISIONS

§ 90.01 DISPOSITION OF ABANDONED PROPERTY.

(A) *Procedure.* Except for vehicles impounded pursuant to § 90.18 of this Chapter, all property lawfully coming into possession of the city will be disposed of as provided in this section which is adopted pursuant to M.S. § 471.195, as it may be amended from time to time. Vehicles impounded pursuant to § 90.18 of this Chapter will be disposed of according to the procedures of §§ 90.15 et seq.

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

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

(D) *Sale.* If the property remains unclaimed in the possession of the city for 60 days, the property will be sold to the highest bidder at a public auction conducted by the Chief of Police or Chief's designee after two weeks' published notice setting forth the time and place of the sale and the property to be sold. If the auction is to be held by way of an on-line auction service on the internet, an advertisement will be published in the city's designated newspaper two weeks prior to sale with the internet address of the auction and a general list of the property to be sold. The City of Brooklyn Park will also advertise on the city's designated website with a link to the internet auction service.

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

(Am. Ord. 2001-948, passed 2-12-01; Am. Ord. 2005-1047, passed 8-22-05)

ABANDONED VEHICLES

§ 90.15 FINDINGS AND PURPOSE.

(A) The presence of abandoned vehicles, junk vehicles, inoperable vehicles, and abandoned property unlawfully kept on property in the city constitutes a public health and safety hazard because they can harbor disease, provide harborage and breeding places for vermin, and present physical dangers to the well-being of children and other residents. The presence of these vehicles and abandoned property constitutes a blight on the landscape and therefore becomes a detriment to the environment and general welfare of the residents. In many instances these vehicles and abandoned property are kept on property by the owners of the property themselves, occupants, or by others with the consent of the property owner. It is necessary to adopt regulations that are more stringent than those contained in M.S. Ch. 168B for the removal of these types of vehicles and abandoned property.

(B) M.S. Ch. 168B, and Minn. Rules Ch. 7035, as they may be amended from time to time, are hereby adopted by reference. Sections 90.15 through 90.25 of this code are adopted under the authority of M.S. § 168B.09, Subd. 2, as it may be amended from time to time. If any of these provisions are less stringent that the provisions of M.S. Ch. 168B or Minn. Rules Ch. 7035, as it may be amended from time to time, the statute or rule shall take precedence.

(Am. Ord. 2001-948, passed 2-12-01)

§ 90.16 DEFINITIONS.

For the purpose of this chapter and Chapter 152 of the City Code, the following definitions apply unless the context clearly indicates or requires a different meaning.

ABANDONED PROPERTY. Property which, after appropriate notification to the property owner, the owner fails to redeem, or property to which the owner relinquishes possession without reclaiming the property.

DEPARTMENT. The Minnesota Department of Public Safety.

IMPOUND. To take and hold a vehicle in legal custody. There are two types of impounds: public and nonpublic.

IMPOUND LOT OPERATOR or ***OPERATOR.*** A person who engages in impounding or storing, usually temporarily, unauthorized or abandoned vehicles. ***OPERATOR*** includes an operator of a public or nonpublic impound lot, regardless of whether tow truck service is provided.

INOPERABLE VEHICLE. A vehicle that has a missing or defective part that is necessary for the normal operation of the vehicle; or is stored on blocks, jacks or other supports; or has not had a current vehicle license for at least 90 days for operation within the State of Minnesota or otherwise in a condition which renders it unlawful to operate in the State of Minnesota.

JUNK VEHICLE. A vehicle that is not in operable condition, or which is partially dismantled, or which is used for sale of parts or as a source of repair or replacement parts for other vehicles, or which is kept for scrapping, dismantling, or salvage of any kind, or has no substantial potential use consistent with its usual function.

MOTOR VEHICLE WASTE. Solid waste and liquid wastes derived in the operation of or in the recycling of a motor vehicle, including such things as tires, used motor oil, lead acid batteries, and antifreeze, but excluding scrap metal.

MPCA or ***AGENCY.*** The Minnesota Pollution Control Agency.

NONPUBLIC IMPOUND LOT. An impound lot that is not a public impound lot.

POSTED. Placing a sign or notice in a conspicuous location on the property or vehicle.

PUBLIC IMPOUND LOT. An impound lot owned by or contracting with a unit of government under section § 90.24.

STREET or ***HIGHWAY.*** The entire width between the boundary lines of every publicly maintained way when any part of it is open to the use of the public for purposes of vehicular travel.

UNAUTHORIZED VEHICLE. A vehicle that is subject to removal and impoundment pursuant to § 90.18(B), or M.S. § 169.041 as it may be amended from time to time, but is not a junk vehicle or an abandoned vehicle.

UNIT OF GOVERNMENT. Includes a state department or agency, a special purpose district, and a county, statutory or home rule charter city, or town.

VEHICLE. Any vehicle, motor vehicle, semitrailer, or trailer as those terms are defined in M.S. § 169.01, as it may be amended from time to time, including pioneer, classic collector and street rod vehicles, or any machine or equipment propelled by power other

than human power, designed to travel along the ground by use of wheels, treads, runners or slides, and transport persons or property or pull machinery It also includes, without limitation, automobile, truck, trailer, motorcycle and tractor.

VITAL COMPONENT PARTS. Those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including such things as the motor, drive train and wheels.

(Am. Ord. 2001-948, passed 2-12-01)

§ 90.17 VIOLATION TO ABANDON MOTOR VEHICLE.

A person who abandons, parks, keeps, places or stores any junk vehicle or inoperable vehicle on any public, or on any private property without the consent of the person in control of the property is guilty of a misdemeanor.

(Am. Ord. 2001-948, passed 2-12-01) Penalty, see § 10.99

§ 90.18 AUTHORITY TO IMPOUND VEHICLES.

(A) *Inoperable or junk vehicles on public property.* No person shall park, keep, place, store or abandon any junk vehicle or inoperable vehicle on a public street, alley, or public property within the city. The City Manager or Manager's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any inoperable or junk vehicle.

(B) *Unauthorized vehicles.* The City Manager or Manager's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any unauthorized vehicle under M.S. § 169.041 as it may be amended from time to time. A vehicle may also be impounded after it has been left unattended in one of the following public or private locations for the indicated period of time:

(1) In a public location not governed by M.S. § 169.041 as it may be amended from time to time:

(a) On a highway and properly tagged by a peace officer, four hours;

(b) Located so as to constitute an accident or traffic hazard to the traveling public, as determined by a peace officer, immediately; or

(c) That is a parking facility or other public property owned or controlled by a unit of government, properly posted, four hours.

(C) *Vehicles on private property.* No person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any junk vehicle or inoperable vehicle to be parked, stored, kept, or otherwise placed on property longer than 48 hours; and no person shall leave any such vehicle on any property within the city for a longer time than 48 hours, except as follows:

(1) If the vehicle is located in an enclosed building; or

(2) The vehicle is located on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or

(3) The vehicle is located in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(D) *Illegally parked vehicles.* The City Manager, Manager's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any vehicle which is illegally parked and the owner of which has been ordered to remove it.

(E) *Vehicles impeding road or utility activities.* The City Manager, Manager's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any vehicle that is impeding, obstructing, or interfering with the repair, construction, or maintenance activities of public utilities or public transportation. Except in an emergency situation, reasonable notice must be given to the vehicle owner or user of such activities.

(F) *Vehicles obstructing traffic or emergency response.* The City Manager, Manager's designee or any peace officer employed or whose services are contracted for by the city may take into custody and impound any vehicle, whether occupied or not, that is: (1) found stopped, standing, or parked in violation of an ordinance or state statute; (2) reported stolen; or (3) impeding firefighting or other emergency activities, snow removal or plowing, or the orderly flow of traffic.

(G) *Notice and hearing.* Before impounding a junk vehicle or inoperable vehicle, the Manager or suthorized designee must give 10 days' written notice through service by mail, by posting a notice on the property, or by personal delivery to the owner of or person in control of the property on which the vehicle is located. When the property is occupied, service upon the occupant is deemed service upon the owner. Where the property is unoccupied or abandoned, service may be by mail to the last known owner of record of the property or by posting on the property. The notice must state:

(1) A description of the vehicle;

(2) That the vehicle must be moved or properly stored within 10 days of service of the notice;

(3) That if the vehicle is not removed or properly stored as ordered, the vehicle will be towed and impounded at an identified location;

(4) That the vehicle may be reclaimed in accordance with the procedures contained in M.S. § 168B.07 or disposed of in accordance with M.S. § 168B.08; and

(5) That the owner of the vehicle or the owner of or person in control of the property on which the vehicle is located may in writing request a hearing before the City Manager or authorized designee.

(H) *Hearing, action.* If a hearing is requested during the 10-day period, the City Manager or authorized designee must promptly schedule the hearing, and no further action on the towing and impoundment of the vehicle may be taken until the City Manager's decision is rendered. At the conclusion of the scheduled hearing, the City Manager or authorized designee may (1) cancel the notice to remove the vehicle; (2) modify the notice; or (3) affirm the notice to remove. If the notice is modified or affirmed, the vehicle must be disposed of in accordance with the city's written order.

(I) *Impounding procedures.* The impounded vehicle will be surrendered to the owner by the towing contractor only upon payment of the required impound, towing and storage fees. Vehicle impounding will be conducted in accordance with M.S. Ch. 168B, governing the sale of abandoned motor vehicles.

(Am. Ord. 2001-948, passed 2-12-01)

§ 90.19 SALE; WAITING PERIODS.

(A) *Sale after 15 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 15 days after notice to the owner, if the vehicle is determined to be:

(1) A junk vehicle, except that it may have a valid, current registration plate and still be eligible for disposal or sale under this subdivision; or

(2) An abandoned vehicle.

(B) *Sale after 45 days.* An impounded vehicle is eligible for disposal or sale under § 90.23, 45 days after notice to the owner, if the vehicle is determined to be an unauthorized vehicle.

§ 90.20 NOTICE OF TAKING AND SALE.

(A) *Contents; notice given within five days.* When an impounded vehicle is taken into custody, the city or impound lot operator taking it into custody must give notice of the taking within five days. The notice must:

(1) Set forth the date and place of the taking; the year, make, model and serial number of the impounded motor vehicle if the information can be reasonably obtained; and the place where the vehicle is being held;

(2) Inform the owner and any lienholders of their right to reclaim the vehicle under § 90.21; and

(3) State that failure of the owner or lienholders to exercise their right to reclaim the vehicle and contents within the appropriate time allowed under § 90.19 is deemed a waiver by them of all right, title and interest in the vehicle and contents and a consent to the transfer of title to and disposal or sale of the vehicle and contents pursuant to § 90.23.

(B) *Notice by mail or publication.* The notice must be sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record. The Department makes this information available to impound lot operators for

notification purposes. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice will be published once in a newspaper of general circulation in the area where the motor vehicle was towed from or abandoned. Published notices may be grouped together for convenience and economy.

(C) *Unauthorized vehicles; notice.* If an unauthorized vehicle remains unclaimed after 30 days from the date the notice was sent under division (B) of this section, a second notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the unauthorized vehicle and to all readily identifiable lienholders of record.

§ 90.21 RIGHT TO RECLAIM.

(A) *Payment of charges.* The owner or any lienholder of an impounded vehicle will have a right to reclaim the vehicle from the city or impound lot operator taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 or 45 days, as applicable under § 90.19, after the date of the notice required by § 90.20.

(B) *Lienholders.* Nothing in this chapter is to be construed to impair any lien of a garage keeper under the laws of this state, or the right of a lienholder to foreclose. For the purposes of this section, ***GARAGE KEEPER*** is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

§ 90.22 OPERATOR'S DEFICIENCY CLAIM; CONSENT TO SALE.

(A) *Deficiency claim.* The nonpublic impound lot operator has a deficiency claim against the registered owner of the vehicle for the reasonable costs of services provided in the towing, storage and inspection of the vehicle minus the proceeds of the sale or auction. The claim for storage costs may not exceed the costs of:

(1) 25 days storage for a vehicle described in section § 90.19(A); and

(2) 55 days storage for a vehicle described in § 90.19(B).

(B) *Implied consent to sale.* A registered owner who fails to claim the impounded vehicle within the applicable time period allowed under section § 90.19 is deemed to waive any right to reclaim the vehicle and consents to the disposal or sale of the vehicle and its contents and transfer of title.

§ 90.23 DISPOSITION BY IMPOUND LOT.

(A) *Auction or sale.*

(1) If an abandoned or unauthorized vehicle and contents taken into custody by the city or any impound lot is not reclaimed under § 90.21, it may be disposed of or sold at auction or sale when eligible pursuant to §§ 90.20 and 90.21.

(2) The purchaser must be given a receipt in a form prescribed by the Registrar of Motor Vehicles which will be sufficient title to dispose of the vehicle. The receipt must also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. Before a vehicle is issued a new certificate of title, it must receive a motor vehicle safety check.

(B) *Unsold vehicles.* Abandoned or junk vehicles not sold by the city or public impound lots pursuant to division (A) of this section must be disposed of in accordance with § 90.24.

(C) *Sale proceeds; public entities.* From the proceeds of a sale under this section by the city or public impound lot of an abandoned or unauthorized motor vehicle, the city will reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred in handling the vehicle pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder for 90 days and then must be deposited in the treasury of the city.

(D) *Sale proceeds; nonpublic impound lots.* The operator of a nonpublic impound lot may retain any proceeds derived from a sale conducted under the authority of division (A) of this section. The operator may retain all proceeds from sale of any personal belongings and contents in the vehicle that were not claimed by the owner or the owner's agent before the sale, except that any suspected contraband or other items that likely would be subject to forfeiture in a criminal trial must be turned over to the appropriate

law enforcement agency.

§ 90.24 DISPOSAL AUTHORITY.

The city may contract with others or may utilize its own equipment and personnel for the inventory of impounded motor vehicles and abandoned scrap metal and may utilize its own equipment and personnel for the collection, storage and transportation of these vehicles and abandoned scrap metal. The city may utilize its own equipment and personnel only for the collection and storage of not more than five abandoned or unauthorized vehicles without advertising for or receiving bids in any 120-day period.

§ 90.25 CONTRACTS; REIMBURSEMENT BY MPCA.

(A) *MPCA review and approval.* If the city proposes to enter into a contract with a person licensed by the MPCA pursuant to this section or a contract pursuant to section § 90.24, the MPCA may review the proposed contract before it is entered into by the city, to determine whether it conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules. A contract that does so conform may be approved by the MPCA and entered into by the city. Where a contract has been approved, the MPCA may reimburse the city for the costs incurred under the contract that have not been reimbursed under § 90.23. Except as otherwise provided in § 90.24, the MPCA shall not approve any contract that has been entered into without prior notice to and request for bids from all persons duly licensed by the MPCA to be a party to a disposal contract pursuant to M.S. § 116.07, as it may be amended from time to time; does not provide for a full performance bond; or does not provide for total collection and transportation of abandoned motor vehicles, except that the MPCA may approve a contract covering solely collection or transportation of abandoned motor vehicles where the MPCA determines total collection and transportation to be impracticable and where all other requirements herein have been met and the unit of government, after proper notice and request for bids, has not received any bid for total collection and transportation of abandoned motor vehicles.

(B) *The city may perform work.* If the city utilizes its own equipment and personnel pursuant to its authority under § 90.24, and the use of the equipment and personnel conforms to the MPCA's plan for solid waste management and is in compliance with MPCA rules, the city may be reimbursed by the MPCA for reasonable costs incurred which are not reimbursed under § 90.23.

(C) *The city required to contract work.* The MPCA may demand that the city contract for the disposal of abandoned motor vehicles and other scrap metal pursuant to the MPCA's plan for solid waste disposal. If the city fails to contract within 180 days of the demand, the MPCA, through the Department of Administration and on behalf of the city, may contract with any person duly licensed by the MPCA for the disposal.

CHAPTER 91: ALARM SYSTEMS

Section

§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ALARM SYSTEM. Any assembly of equipment or devices, either mechanically or electrically operated, which signals, either audibly or in any other manner so as to be seen, heard, or otherwise detected inside or outside the protected area serviced by the alarm system, that an incident is occurring which could reasonably be expected to summon police or fire services. ***ALARM SYSTEM*** does not include systems affixed to motor vehicles, trailers or recreational motor vehicles unless the vehicle is permanently located at a site.

ALARM USER. The person, firm, partnership, association, corporation, company or organization of any kind which uses an alarm system to protect its premises, regardless of whether it owns or leases the system.

AUTOMATIC DIALING DEVICE. A device which utilizes the public primary telephone trunk lines or other dedicated lines to select a predetermined or assigned telephone number and which transmits, by a pre-recorded voice message or code signal, that an incident of the kind noted in the definitions of "Alarms System" has occurred.

FALSE ALARM. Any activation of an alarm system that results in a response by police or fire personnel where an emergency does not exist. ***FALSE ALARM*** includes, but is not limited to, activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligent use or maintenance of the alarm system by the alarm user or the alarm user's employee or agents. ***FALSE ALARM*** does not include alarm activations caused by utility company power outages, by climatic conditions such as unusually strong winds or lightning, or by any other conditions that are clearly beyond the control of the alarm manufacturer, installer, and user. ***FALSE ALARM*** does not include activation of an alarm system as the result of an effort or order to upgrade, install, test, or maintain the system if the police and/or fire departments and, where applicable, the central monitoring agency for the alarm system are each notified before such work on the alarm system.

('72 Code, § 1025:00) (Ord. 1994-752, passed 1-10-94)

§ 91.02 OPERATION OF SYSTEM.

(A) *Operation and maintenance.* The alarm user must maintain the alarm system and premises in a manner that will minimize or eliminate false alarms.

(B) *Signed statement.* Within five days of notification of each false alarm, the alarm user must submit a signed statement to the Brooklyn Park Police Department or Fire Department, stating the apparent cause of the false alarm and the measure(s) taken or to be taken to remedy the problem. An administrative penalty of $25 must be paid by the alarm user to the city for each signed statement not returned to the city within five days. Payment of these penalties may be enforced by civil action.

(C) *Penalties.* An administrative penalty must be paid by the alarm user to the city for each false alarm in excess of three during a calendar year. The penalty shall be $50 for the fourth alarm and shall increase by the sum of $25 for each succeeding false alarm thereafter. Payment of these penalties may be enforced by civil action.

(D) *Hearing.* An alarm user who receives an administrative citation including a change under this chapter may request a hearing before a hearing officer to contest the charge under the City of Brooklyn Park Administrative Penalties Program, as outlined in Chapter 37.

('72 Code, § 1025:05) (Ord. 1994-752, passed 1-10-94; Am. Ord. 2003-996, passed 4-14-03)

§ 91.03 MISCELLANEOUS.

(A) Local exterior alarms with audible sounds must not sound for a period exceeding 15 minutes.

(B) It is unlawful to intentionally set off a false alarm.

(C) The use of automatic dialing devices is permitted, except that such device must not be set or programmed to dial the Brooklyn Park Police Department, Fire Department or the Hennepin County Sheriff's Dispatch Center.

(D) (1) Alarm users whose protected premises are located within the city must provide, upon the occurrence of its first false alarm and on an ongoing basis, the following information:

(a) The name, date of birth and address of the alarm user, alarm owner (if different from the user) and the alarm servicer.

(b) The type of alarm system being used.

(c) The person(s) designated by the alarm user as its contact person(s) for purposes of alarm related matters and home or appropriate telephone number.

(2) The provision of this information must be an on- going requirement such that the Police/Fire Department must be notified of additions or changes.

(E) All information and statistics collected and maintained in the administration of this section are deemed non-public data and security information exempt from disclosure pursuant to state statute.

('72 Code, § 1025:10) (Ord. 1994-752, passed 1-10-94) Penalty, see § 91.99

§ 91.99 PENALTY.

Except for the occurrence of a false alarm, or the failure to submit a signed statement, the remedy for which is an administrative fine under the city's administrative penalties program, a violation of any other provision of this chapter is a penal offense and will be punished according to § 10.99 of this code.

('72 Code, § 1025:15) (Ord. 1994-752, passed 1-10-94)

CHAPTER 92: ANIMALS

Section

General Provisions

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

GENERAL PROVISIONS

§ 92.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Cats, dogs, domestic animals and wild animals, and crossbreeds with wild animals not customarily maintained at all times

in an enclosure cage within a dwelling.

ANIMAL CONTROL OFFICER. That person or agency designated by the City Manager to control the keeping of animals within Brooklyn Park.

AT LARGE. An animal is "at large" when it is not under restraint. A dog is not "at large" when accompanied by an owner at an off leash dog exercise area.

CAT. An animal of the species Felis Domestica.

COMMERCIAL KENNEL. A place in a proper business zoning district where animals are kept, congregated, or confined and where the business of selling, boarding (during the day or overnight), breeding, showing, treating, training, or grooming animals is conducted.

COMPETENT PERSON. An individual that has full control of the animal, either by physical control or verbal control.

DANGEROUS DOG.

(1) Any dog that has:

(a) Without provocation, inflicted substantial bodily harm on a human being on public or private property;

(b) Killed a domestic animal without provocation while off the owner's property; or

(c) Been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(2) A dog is dangerous when the owner or custodian is in possession of training apparatus, paraphernalia, or drugs intended to be used to prepare or train dogs for fighting and the dog displays evidence that it has been or will be fought.

DOG. An animal of the species Canis Domestica.

GREAT BODILY HARM. Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

KEEPING OF ANIMAL. Providing for any animal in compliance with M.S. Chapter 346, Companion Animal Welfare Act.

OFF LEASH DOG EXERCISE AREA. A public, city-designated area where a dog owner is permitted to allow a dog or dogs to socialize and exercise off leash, subject to the rules and regulations for such an area.

OWNER. Any person, group, or corporation owning, keeping, harboring, or having custody of an animal.

POTENTIALLY DANGEROUS DOG. Any dog that:

(1) When unprovoked, inflicts bites on a human or domestic animal on public or private property;

(2) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or

(3) Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

SUBSTANTIAL BODILY HARM. Bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

UNATTENDED ANIMAL. An animal unaccompanied or not in the control of a competent person.

UNDER RESTRAINT. An animal is "under restraint" if it is controlled by a leash or within a vehicle being driven or parked on a public street, or within the property limits of its owner's premises under some form of physical restraint such as a leash or fence or in the presence of a competent person. An unattended animal on the property of another, without the consent of such property owner, is "at large" and not under restraint, even though it is on a leash.

('72 Code, § 415:00) (Am. Ord. 1977-251(A), passed 10-11-77; Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed

10-27-97; Am. Ord. 2001-944, passed 1-8-01; Am. Ord. 2006-1067, passed 11-27-06; Am. Ord. 2009-1096, passed 2-23-09; Am. Ord. 2010-1114, passed 4-26-10; Am. Ord. 2012-1149, passed 9-4-12)

§ 92.02 ISSUANCE OF TAGS; REGULATIONS; LOST OR STOLEN TAGS.

(A) Upon issuance of an animal license by the License Division, the licensee will be provided with a metallic tag. The animal must wear a collar or harness on which the license tag is affixed. It is unlawful to counterfeit any such tag of this municipality or use a counterfeit tag. A license tag is not transferrable to any other animal or to a new owner for an animal for which it is issued.

(B) If any such tag is lost or stolen, the owner may obtain a new tag by paying the sum set by the Council therefor from time to time.

(C) Owners of dogs designated as dangerous must affix an additional tag to the dog's collar identifying the dog as dangerous and containing the dangerous dog symbol as further set forth in M.S. § 347.51.

('72 Code, §§ 415:12 - 415:15) (Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2009-1096, passed 2-23-09) Penalty, see § 10.99

§ 92.03 RESTRAINT.

No person shall permit an animal to be at large in this city, but must keep such animal under restraint at all times. No person having custody or control of any animal shall permit the same to be on any unfenced area or lot abutting upon a street, public park, public place or upon any private land without being effectively restrained from moving beyond such unfenced area or lot; nor shall any person having custody or control of any animal permit the same at any time to be on any street, public park, school ground or any public place without being effectively restrained by chain or leash not exceeding eight feet in length. A dog may be unrestrained by a chain or leash in an off leash dog exercise area, subject to the rules and regulations for such an area.

('72 Code, § 415:18) (Am. Ord. 2001-944, passed 1-8-01; Am. Ord. 2010-1114, passed 4-26-10) Penalty, see § 10.99

§ 92.04 CONFINEMENT.

The owner must confine within a building or secure enclosure any fierce, or vicious animal except when muzzled and in the control of a competent person. Every female animal in heat must be confined in a building, secure enclosure, veterinary hospital, or commercial kennel, or must be controlled on a leash while being exercised, provided it does not create a public nuisance. While on the owner's property, dogs designated as dangerous must be kept in a proper enclosure as described in M.S. §§ 347.50, 347.52 and this code.

('72 Code, § 415:21) (Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 2009-1096, passed 2-23-09; Am. Ord. 2012-1149, passed 9-4-12) Penalty, see § 10.99

§ 92.05 ANIMAL NOISE.

It is unlawful to keep any animal or bird which by causing frequent or long continued noise unreasonably annoys or disturbs the peace, quiet, comfort, or repose of any ordinary person or persons in the vicinity.

('72 Code, § 415:23) (Am. Ord. 1984-455(A), passed 6-11-84; Am. Ord. 1990-654(A), passed 6-25-90) Penalty, see § 10.99

§ 92.06 PUBLIC NUISANCES.

The keeping of an animal that annoys other persons is a public nuisance and is unlawful. Any animal which damages property, plantings, or structures, or which deposits fecal matter on public or private property of others or which scratches or bites persons while at large, or which habitually barks, cries, or mews, or which chases or approaches persons on public streets or sidewalks in a threatening manner, after the owner has been notified of such acts pursuant to § 92.08 hereof, is declared to be a nuisance. Upon the receipt of a written complaint of such annoyance signed by the occupants of two or more neighboring properties, the Animal Control

Officer must notify the owner of such animal that the nuisance must be abated within 48 hours. Failure to obey such notice is a penal offense.

('72 Code, § 415:24) (Am. Ord. 1997-861, passed 10-27-97) Penalty, see § 10.99

§ 92.07 ANIMAL DEFECATION.

(A) *Animal defecation prohibited.* Any person being the owner of or having charge of any animal not confined to that person's property must immediately remove any feces deposited on public or private property. Any such person must have in their possession a means to collect and dispose of all fecal matter in a proper manner. A person convicted of a violation of this provision is guilty of a penal offense.

(B) *Accumulation of feces prohibited.* A person being the owner of or having charge of any animal must keep their premises free from an unreasonable accumulation of fecal matter. A person convicted of a violation of this provision is guilty of a penal offense.

('72 Code, § 415:245) (Ord. 1993-713, passed 1-11-93; Am. Ord. 1997-861, passed 10-27-97) Penalty, see § 10.99

§ 92.08 NOTICE TO OWNER.

In addition to the provisions of § 92.06, anyone may send or deliver to the City Manager or other person the City Manager designates, or the Animal Control Officer a written complaint, stating the acts committed by an animal, the name and address of the person owning or harboring the animal, and the name and the address of the person making the complaint. The City Manager or other person the City Manager designates, or the Animal Control Officer must then promptly notify the person owning or harboring the dog or cat of the acts complained of, must request that the animal be restrained from committing any more such acts, and must inform the person that if the animal continues to commit such acts thereafter then the person owning or harboring the animal may be convicted hereunder.

('72 Code, § 415:25) (Ord. 1977-251(A), passed 10-11-77; Am. Ord. 1997-861, passed 10-27-97)

§ 92.09 RESPONSIBILITY OF OWNER.

A person who owns or harbors an animal declared to be a nuisance hereunder is deemed to be maintaining a nuisance.

('72 Code, § 415:26) (Ord. 1977-251(A), passed 10-11-77)

§ 92.10 POUND.

The Council may provide for an animal pound, either within or outside the municipal limits.

('72 Code, § 415:27)

§ 92.11 DISEASED ANIMALS PROHIBITED.

It is unlawful for any person to knowingly bring into the city, or have in the person's possession, an animal which is afflicted with infectious or contagious diseases. All such diseased animals must be destroyed in a humane manner unless the disease is curable and the animal is under the care of, and receiving treatment from, a licensed veterinarian.

('72 Code, § 415:28) (Ord. 1989-626(A), passed 6-26-89) Penalty, see § 10.99

§ 92.12 IMPOUNDING.

It is the duty of the Animal Control Officer to apprehend any animal found running at large or otherwise in violation of the provisions

of this chapter and to impound such animal in the pound or other suitable place pending compliance or a determination on the animal's disposition. The Animal Control Officer upon receiving any animal must make a complete registry, entering the breed, color, sex, and whether licensed, if such information can be obtained safely. If licensed, the Animal Control Officer must enter the name and address of the owner and the number of the license tag. If the animal bears no identification which reasonably reveals its ownership, the Animal Control Officer shall impound the animal in the pound for a period of at least seven days. Immediately upon impounding an animal, reasonable efforts shall be made to notify the owner and inform the owner of the animal's confinement and the procedures for release of the animal to the owner. Any animal impounded, with the exception of a potentially dangerous dog or dangerous dog or a dog that has inflicted substantial or great bodily harm upon a person, may be reclaimed by the owner within seven days after such impoundment. Before the owner shall be permitted to recover possession of the animal, the owner shall pay the city all required fees and costs of impoundment. An animal that is not redeemed by its owner within seven days after impounding may be euthanized and disposed of in a sanitary manner by the Animal Control Officer.

('72 Code, § 415:30) (Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2006-1067, passed 11-27-06; Am. Ord. 2009-1096, passed 2-23-09)

§ 92.13 ENFORCEMENT.

To enforce this chapter, the Animal Control Officer or a police officer may enter upon private property where there is reasonable cause to believe that an animal is on the premises and is not licensed as required by ordinance, or that there is an animal on the premises which is not being kept, confined, or restrained. The owner must produce for inspection the owner's animal license receipt when requested to do so by such officer.

('72 Code, § 415:33) (Am. Ord. 1989-626(A), passed 6-26-89) Penalty, see § 10.99

§ 92.14 QUARANTINE.

An animal that has bitten a person will immediately be euthanized, if required to test for rabies as determined by state or county health agencies, as recommended by the Center for Disease Control, or at the request of the owner. An animal not euthanized under this section must be quarantined by a responsible person designated by the Chief of Police, or by the owner, if all other sections of this chapter are met, as approved by the Animal Control Officer for a period of ten days and must be kept apart from other animals. Upon completion of the ten-day requirement the animal must be examined by a veterinarian, designated by this municipality, to determine if the animal has a disease which may have been transmitted by such bite, such impound and examination are the expense of the animal owner. Upon the expiration of the ten days, if the required and satisfactory examination by a licensed veterinarian occurs, the quarantine will be lifted. If during the course of the quarantine, it is determined that the animal may be afflicted with an infectious disease, the Animal Control Officer must take immediate action to determine conclusively if such a disease is present in the animal, up to and including euthanasia and testing of the animal. Any animal which has been bitten by a rabid animal must be euthanized or impounded and kept in the same manner for a period of six months; provided that if the animal, which has been bitten by a rabid animal, has been vaccinated at least three weeks before such bite and within one year of such bite and if it is again immediately vaccinated, then the animal must be confined or impounded for a period of 40 days before it is released. This section does not apply to a dog serving in the city's Police Department as a part of its canine patrol or to a dog that has inflicted substantial or great bodily harm on a human being on public or private property without provocation, which is governed by § 92.26.

('72 Code, § 415:36) (Am. Ord. 1973-156(A), passed 11-12-73; Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2006-1067, passed 11-27-06; Am. Ord. 2009-1096, passed 2-23-09)

§ 92.15 COMMERCIAL KENNELS.

The following performance standards are for commercial kennels:

(A) The owner of a commercial kennel must receive a license per M.S. § 347.31 through 347.40.

(B) *Fecal waste.* All animal wastes must be disposed of in a timely and sanitary manner. In no event shall there be an accumulation of waste beyond 24 hours. In public areas during operating hours, all wastes must be disposed of immediately or, at minimum, such waste to be stored in a container with tight fitting lids and disposed of in an approved sanitary manner at the end of the day.

(C) All cages, pens, benches, boxes, or receptacles in which animals are confined shall be easily cleanable, durable and constructed of non-corrosive material and maintained in good repair. Such cages and pens shall also be properly sufficient and humane in size for the confinement of such animals.

(D) *Abandoned animals.* M.S. § 346.37 regulating the abandonment of animals in commercial kennels is hereby adopted by reference and fully set forth in this code.

(E) *Sale of animals.* Any commercial kennel engaging in the sale of animals must comply with Minn. Rules § 1720.1560 which are hereby adopted by reference.

(F) *Bites.* All sections of this chapter pertaining to dog bites shall apply to commercial kennels.

(G) *Humane treatment.* M. S. §§ 343.20 through 343.36 relating to cruelty to animals are hereby adopted by reference and incorporated in and made a part of this article as though fully set forth in this section.

(H) *Exception.* Hospitals, clinics, and federally-regulated medical facilities operated by licensed veterinarians exclusively for the care and treatment of animals are exempt from the provisions of this section.

(Ord. 2012-1149, passed 9-4-12)

§ 92.16 CERTAIN MALE DOGS TO BE NEUTERED.

A male dog which bites a human must be neutered upon completion of the quarantine requirement, unless the animal owner can demonstrate that neutering the animal will significantly decrease its value for show. This neutering is to be at the expense of the animal owner. If the owner or person in whose custody the animal resides refuses to neuter the dog, the Animal Control Officer will declare the keeping of the dog to be a public nuisance and must by written notice direct the owner or person keeping the dog to abate the public nuisance, and if the person fails to do so, the person is guilty of a penal offense. Dogs designated as dangerous and potentially dangerous must be sterilized at the owner's expense as set forth in this code and M.S. § 347.52.

('72 Code, § 415:38) (Ord. 1997-861, passed 10-27-97; Am. Ord. 2009-1096, passed 2-23-09) Penalty, see § 10.99

§ 92.17 ANIMALS POSING AN IMMINENT THREAT.

If an animal is diseased, vicious, rabid, or exposed to rabies, or poses an imminent threat to public safety, and if such animal cannot be impounded after a reasonable effort, or cannot be impounded without serious risk to the persons attempting it, the animal may be immediately killed by or under the direction of the Animal Control Officer or a police officer.

('72 Code, § 415:39) (Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2009-1096, passed 2-23-09)

§ 92.18 TREATMENT DURING IMPOUNDING.

Any dog or cat or other animal impounded must be kept with kind treatment and comfort.

('72 Code, § 415:42) (Am. Ord. 1989-626(A), passed - - ; Am. Ord. 1997-861, passed - - ; Am. Ord. 2006-1067, passed 11-27-06) Penalty, see § 10.99

§ 92.19 REDEMPTION.

(A) An animal may be redeemed from the pound during the hours set forth by the requirements of Minnesota Statutes, by the owner upon paying the following fees and charges:

(1) The license fee for the dog or cat if the license has not previously been obtained.

(2) The late-license penalty, in the amount set by the Council, where a license has not been obtained within the required time.

(3) The boarding fee in the amount set by the Council from time to time.

(4) An impounding fee in the amount established by the Council.

(5) Any fees incurred by the city for required treatment of the animal.

(6) If the owner of any impounded animal is unable to get to the city offices during normal working hours to pay the redemption fees, the Animal Control Officer is authorized to accept after hours or on weekends or holidays, a deposit in the amount equal to or greater than the highest fee amount that would be expected for the impound in question. This deposit must be presented to the Licensing Division on the next business day. The animal owner may then return to the city offices at their earliest convenience to receive any refund due, which is the difference between the deposit and the actual fees due. The License Division will also add a fee as established by the City Council for any services rendered when the officer is required to extend services in the following cases:

(a) Beyond regular office hours.

(b) At times when he or she is not regularly on patrol.

(c) If the city incurs additional expenses for any additional services.

(B) This section does not require the pound keeper or the Animal Control Officer to extend services other than during regular business hours unless it is reasonably convenient for those persons to provide those services.

('72 Code, § 415:45) (Am. Ord. 1997-861, passed 10-27-97)

§ 92.20 NOTICE TO OWNER; DISPOSAL OF UNREDEEMED ANIMALS.

The Animal Control Officer must make a reasonable effort to notify the owner of any dog or cat or other impounded animal which has identification on it from which the name and address of the animal's owner can be readily determined. For the purposes of this section, a reasonable effort to notify the owner will have been made if within 48 hours of impound a written notice containing the date and time of impoundment, the location and phone number of the pound, the end of the impoundment period and a copy of this section, is either mailed by first class mail or delivered to the place of residence of the owner, if known. If at the end of the impounding period the animal is not reclaimed by the owner, such animal is deemed to have been abandoned and becomes the property of the pound keeper for disposal in a humane manner. The notice, reclamation, and disposition of a dangerous dog is set forth in § 92.26 of this code.

('72 Code, § 415:48) (Am. Ord. 1985-482(A), passed 4-22-85; Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2009-2096, passed 2-23-09)

§ 92.21 LIMIT OF ANIMALS ON ONE PREMISES.

It is unlawful to keep more than three animals over six months of age at any one dwelling unit except at a commercial kennel.

('72 Code, § 415:54) (Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed 10-27-97) Penalty, see § 10.99

§ 92.22 ABANDONMENT.

It is unlawful for any person to abandon any animal in this municipality. Failure to timely redeem animals from the city pound constitutes abandonment as provided in this section.

('72 Code, § 415:57) (Am. Ord. 1997-861, passed 10-27-97) Penalty, see § 10.99

§ 92.23 REPORTS BY POUND KEEPER.

The pound keeper must make an accurate written report each month to the City of Brooklyn Park stating all cats or other animals impounded, the duration of any such impoundment, all animals destroyed, and any other pertinent data relating to animal control which may be requested by the City Manager or designated person.

('72 Code, § 415:75) (Am. Ord. 1997-861, passed 10-27-97)

§ 92.24 NUISANCE PROHIBITED.

Nothing herein contained in this chapter shall be construed to allow any acts which constitute a nuisance under this code.

('72 Code, § 415:76) (Ord. 1989-626(A), passed 6-26-89)

§ 92.25 POTENTIALLY DANGEROUS DOGS.

(A) *Registration.* Any person who has a dog that has been determined to be a potentially dangerous dog pursuant to this code or pursuant to M.S § 347.50, must register the dog as a potentially dangerous dog with the city.

(1) The owner shall also make the potentially dangerous dog available to be photographed by the city's Animal Control Officer for identification purposes at a time and place specified by Animal Control.

(2) The registration of the potentially dangerous dog must be renewed annually with the city until the dog is deceased or is determined to be no longer potentially dangerous. The current owner of a potentially dangerous dog must notify the city's Animal Control Officer in writing of the death of the dog or its transfer to another owner or to another location within 30 days of the dog's death or transfer. If requested by the city, the owner must execute an affidavit under oath setting forth the circumstances of the dog's death and disposition or the complete name, address and telephone number of the person to whom the dog was transferred to. The Chief of Police, or its designee, shall be allowed to inspect the animal and the place where the animal is now located at any reasonable time.

(3) The owner of a potentially dangerous dog must be 18 years of age or older.

(B) *Appeal.* An appeal of the designation must be submitted on the form supplied by the city. The completed form and designation appeal fee must be returned to the Chief of Police within seven days of notification. Potentially dangerous determination appeals consist of a record review by the Chief of Police, or its designee. The owner shall be notified of the results of the record review within ten days of the receipt of the completed form and designation appeal fee.

(C) *Microchip implantation.* All dogs that are determined to be potentially dangerous pursuant to the definition contained within this code or pursuant to M.S § 347.50 by the city shall be implanted with a microchip for identification purposes within 14 days of the date the dog is declared potentially dangerous. All costs related to purchase and implantation of the microchip shall be borne by the owner of the dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, the city may have a microchip implanted in the dog at the owner's expense. Upon request, the owner or custodian of a potentially dangerous dog must make the dog available to Animal Control for an inspection to determine whether a microchip has been implanted.

(D) *Sterilization.* The city may require a potentially dangerous dog to be sterilized at the owner's expense within 14 days of the date the dog is declared potentially dangerous. If the owner does not have the dog sterilized, Animal Control may have the dog sterilized at the owner's expense. Upon request, the owner or custodian of a potentially dangerous dog must make the dog available to Animal Control for an inspection or provide proof in the form of a statement from a licensed veterinarian to determine whether the dog has been sterilized.

(E) *Obedience class.* The city may require that the owner and its potentially dangerous dog attend and complete an approved obedience class.

(F) *Removal of potentially dangerous dog classification.* A dog determined to be a potentially dangerous dog may be evaluated by a professional animal behaviorist. The owner may provide to the city at the time of the license a report by such animal behaviorist. If the report states that the dog has been rehabilitated, the dog may no longer be classified as potentially dangerous and is no longer subject to the requirements of this section.

(G) *Victim's request.* Upon the request of an adult victim, the Chief of Police may waive the designation as a potentially dangerous dog so long as the owner of the dog complies with the requirements of this code and state law as it applies to potentially dangerous dogs.

(H) *Removal of potentially dangerous dog classification.* Beginning six months after a dog is declared a potentially dangerous dog, an owner may request on an annual basis that the city review the dog's designation as a potentially dangerous dog. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If Animal Control finds sufficient evidence that the dog's behavior has changed, the city may rescind the potentially dangerous dog classification. The owner of the dog shall be notified in

writing of the review results within ten business days of receipt of the request.

(I) *Misdemeanor.* Any person convicted of violating this section shall be subject to the penalties specified by state statute.

(J) *Exemption.* Dogs owned and controlled by local, state and federal law enforcement agencies that are used in law enforcement or related activities and service animals, which are individually trained or being trained to do work or perform tasks for the benefit of an individual with a disability, are exempt from the provisions of this section. A dog may not be declared potentially dangerous if the threat, injury, or damage was sustained under the conditions set forth in M.S. § 347.51, Subd. 5.

(Ord. 2006-1067, passed 11-27-06; Am. Ord. 2009-1096, passed 2-23-09)

§ 92.26 DANGEROUS DOGS.

(A) *Registration.* Any person who has a dog that has been determined to be a dangerous dog pursuant to this code or pursuant to M.S. § 347.50, Subd. 1, must register the dog as a dangerous dog with the city, pay an annual fee in addition to the dog license fee, and meet all the other requirements provided for in M.S. § 347.51, Subd. 2.

(1) The owner shall also make the dangerous dog available to be photographed by the city's Animal Control Officer for identification purposes at a time and place specified by Animal Control.

(2) The registration of the dangerous dog must be renewed annually with the city until the dog is deceased or is determined to be no longer dangerous. The current owner of the dangerous dog must notify the city's Animal Control Officer in writing of the death of the dog or its transfer to another owner or to another location within 30 days of the dog's death or transfer. If requested by the city, the owner must execute an affidavit under oath setting forth the circumstances of the dog's death and disposition or the complete name, address and telephone number of the person to whom the dog was transferred to.

(3) The owner of the dangerous dog must be 18 years of age or older.

(4) Dangerous dogs registered in the city shall be provided with a warning symbol for posting on the owner's property pursuant to M.S. § 347.51, Subd. 2a. The city may charge the registrant a reasonable fee for the symbol.

(B) *Keeping of dangerous dogs.*

(1) *Confinement.* A dangerous dog must be securely confined indoors or confined in a secure outdoor enclosure suitably sized for the dog and otherwise meeting the requirements of a proper enclosure. An enclosure is secure and proper within the meaning of this section if it meets the following specifications:

(a) A floor area of 32 square feet per animal kept in such enclosure;

(b) A sidewall height of five feet, constructed of 11 gauge of heavier wire with openings that do not exceed two inches; and

(c) If the enclosure is on a permeable surface, the fence must be buried a minimum of 18 inches into the ground;

(d) The support posts are one and one-quarter inch or larger steel pipe buried a minimum of 18 inches into the ground;

(e) A cover over the entire kennel that is constructed of the same gauge wire as the sidewalls or heavier with openings no greater than two inches;

(f) An entrance/exit self closing, self locking gate constructed of the same material as the sidewalls and with openings no greater than two inches; and

(g) In compliance with all zoning setbacks requirements unless a variance is obtained.

When the dog is confined in the enclosure, all access points of the enclosure must be locked. An Animal Control Officer may seize a dangerous dog that is unconfined while on the owner's property and not otherwise restrained as provided below.

(2) *Restraint.* If the dangerous dog is outside of the proper enclosure, it must be securely muzzled and restrained with a chain not exceeding three feet in length, and having a tensile strength sufficient to restrain it. The dog's muzzle must be designed in a manner that will prevent it from biting any person or animal but that will not cause injury to the dog or interfere with its vision or respiration.

(3) *Sterilization.* The city may require a dangerous dog to be sterilized at the owner's expense within 14 days of the date the dog is declared dangerous. If the owner does not have the dog sterilized, Animal Control may have the dog sterilized at the owner's expense. Upon request, the owner or custodian of a dangerous dog must make the dog available to Animal Control for an inspection to

determine whether the dog has been sterilized.

(4) *Microchip implantation.* All dogs that are determined to be dangerous shall be implanted with a microchip for identification purposes. All costs related to purchase and implantation of the microchip shall be borne by the owner of the dog. The name of the microchip manufacturer and identification number of the microchip must be provided to the city. If the microchip is not implanted by the owner, the city may have a microchip implanted in the dog at the owner's expense. Upon request, the owner or custodian of a dangerous dog must make the dog available to Animal Control for an inspection to determine whether a microchip has been implanted.

(5) *Surety bond or liability insurance.* Before the city will register a dangerous dog the owner must present sufficient evidence that the owner has obtained a surety bond or a policy of liability insurance in the amounts set forth in M.S. § 347.51, Subd. 2.

(C) *Obedience class.* The city may require that the owner and its dangerous dog attend and complete an approved obedience class.

(D) *Removal of dangerous dog classification.* Beginning six months after a dog is declared a dangerous dog, pursuant to M.S. § 347.51, Subd. 3(a), an owner may request on an annual basis that the city review the dog's designation as a dangerous dog. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If Animal Control finds sufficient evidence that the dog's behavior has changed, the city may rescind the dangerous dog classification. The owner of the dog shall be notified in writing of the review results within ten business days of receipt of the request.

(E) *Seizure of dangerous dogs.* The city may seize any dangerous dog if the dog has been declared dangerous and the owner has not registered the dog pursuant to this section within 14 days of receiving notice of the dangerous dog declaration. The city may also seize a dangerous dog that is not being maintained in a secure enclosure, a dog that is outside of the enclosure and is not under the required physical restraint, or if the owner of a dangerous dog has otherwise violated M.S. § 347.54. The city shall provide the dog's owner with notice of the dog's seizure. A dangerous dog seized under this section may be reclaimed by the owner upon payment of impound and boarding fees and presenting proof that all requirements of this section are being met. A dangerous dog that is not reclaimed within seven days of the date of the notice may be disposed of as provided in this section and the dog's owner shall be responsible for any costs incurred in the confinement and disposal of the dog.

(F) *Destruction of dangerous dogs.* The Chief of Police or the Chief of Police's designee, after having been advised that a dog has inflicted substantial or great bodily harm on a human being on public or private property without provocation; inflicted multiple bites on a human on public or private property without provocation; bit multiple human victims on public or private property in the same attack without provocation; bit a human on public or private property without provocation in an attack where more than one dog participated in the attack; or the dangerous dog is in violation of this section or state law may proceed as follows:

(1) The owner of the dog shall be notified by the city in writing either personally or by mail as to the reasons the dog is subject to destruction under this section and the date(s), time(s), place(s), names of person(s) harmed, circumstances, telephone number and contact person where the dog is kept, copy of the ordinance and state statute, and the statements and form required by M.S. § 347.541 including that the owner shall be given seven days to request a hearing for a determination as to the disposition of the dog. If the owner does not request a hearing within seven days of the date of receiving the notice, the Chief of Police or the Chief of Police's designee may order the dog to be destroyed and shall serve or deliver a copy of the destruction order to the dog's owner. The city shall not destroy a dog until at least seven days have passed since the issuance of a destruction order.

(2) If the dog's owner requests a hearing for determination as to the dangerous nature of the dog, the hearing shall be held before an impartial hearing officer selected by the Chief of Police from a list of persons approved by the City Council at a date not more than 14 days after receipt of the owner's demand for the hearing. The records of the Animal Control Officer shall be admissible for consideration without further foundation. After considering all evidence, the hearing officer shall make a determination as he or she deems proper and issue a decision on the matter within ten days of the hearing. The hearing officer shall consider the following factors:

(a) Whether the threat, injury, or damage fits any of the exemptions set forth in M.S. § 347.51, Subd. 5; and

(b) Whether the threat, injury, or damage occurred while the animal was protecting or defending a person or the animal's offspring within the immediate vicinity of the animal.

(3) The hearing officer may order the dog to be destroyed. The city shall deliver a copy of the hearing officer's order to the dog's owner. The decision of the hearing officer shall be final unless the owner files an appeal to the Court of Appeals. The city shall not destroy a dog until at least five business days have passed since the issuance of a destruction order.

(4) The Animal Control Officer is authorized to take the dog subject to the destruction order into custody at the time a destruction order is served or delivered. The dog's owner must immediately make the dog available to the Animal Control Officer at the time a

destruction order is delivered. The city shall not destroy a dog until at least seven days have passed since the issuance of a destruction order.

(5) If the dangerous dog declaration is upheld by the hearing officer, the actual expenses of the hearing will be the responsibility of the dog's owner. If the declaration is overturned by the hearing officer, the costs and fees of the hearing, impound, and boarding will be reviewed by the hearing officer.

(G) *Misdemeanor*. Any person convicted of violating this section shall be subject to the penalties specified by state statute.

(H) *Exemption*. Dogs owned and controlled by local, state and federal law enforcement agencies that are used in law enforcement or related activities and service animals, which are individually trained or being trained to do work or perform tasks for the benefit of an individual with a disability, are exempt from the provisions of this section. A dog may not be declared dangerous if the threat, injury, or damage was sustained under the conditions set forth in M.S. § 347.51, Subd. 5.

(Ord. 2006-1067, passed 11-27-06; Am. Ord. 2009-1096, passed 2-23-09)

§ 92.27 CONCEALMENT.

Any person who harbors, hides, or conceals a dog declared dangerous that has been ordered into custody for disposition shall be guilty of a misdemeanor.

(Ord, 2090-1096, passed 2-23-09)

§ 92.28 RESTRICTIONS ON FUTURE OWNERSHIP.

(A) *Convictions*. A person may not own a dog if he or she has been convicted of any of the violations set forth in M.S. § 347.542. This prohibition applies to any member of that same person's household.

(B) *Non-compliance*. An owner of a potentially dangerous of dangerous dog that fails to comply with the requirements of this chapter or state law may be prohibited or restricted from future ownership or custody of other dogs. An owner in violation of this chapter or state law shall be notified in writing and may request a hearing within seven days of the receipt of the notice of violation. If a hearing is requested, the Chief of Police, or its designee, shall schedule a hearing before an impartial hearing officer within 14 days of the receipt of the request. A hearing fee shall be paid to the city prior to the scheduling of the hearing. The owner shall be notified of the hearing results in writing within ten days.

(Ord. 2009-1096, passed 2-23-09)

§ 92.29 BASIC CARE.

All animals shall receive kind and humane treatment from their owners, which shall include proper and adequate, clean, ventilated, and sanitary housing or shelter from the elements, and sufficient food and water for their comfort. Failure to provide basic care is a violation of this chapter.

(Ord. 2009-1096, passed 2-23-09)

§ 92.30 PUBLIC PROTECTION FROM DOGS.

Any person owning or having care, control, or custody of a dog shall at all times prevent the dog from attacking, biting or otherwise causing injury or attempting to cause injury to any person engaged in an lawful act or causing injury or attempting to cause injury to a domestic animal.

(Ord. 2090-1096, passed 2-23-09)

§ 92.31 CONDITIONING EQUIPMENT PROHIBITED.

No person shall use or possess any device, equipment, treatment or products for the strengthening or conditioning of an animal with the intent to enhance the animal's ability to inflict bodily injury upon human beings or domestic pets on public or private property.

(Ord. 2009-1096, passed 2-23-09)

§ 92.32 OFF LEASH DOG EXERCISE AREA PERMIT REQUIRED.

It is unlawful for an owner of a dog to make use of an off leash dog exercise area unless the owner has paid the required license fee to the city, has obtained a valid license tag from the city, or has paid the daily use fee, and complies with the rules and regulations for such an area. The license fee and the daily use fee is in the amount set by the Council from time to time and in the Fee Appendix to this code.

(Ord. 2010-1114, passed 4-26-10)

LICENSING

§ 92.35 LICENSE REQUIRED.

It is unlawful to own, harbor, keep, or have custody of an animal over six months of age within this municipality, unless a current license for the animal has been obtained and unless the animal has a current vaccination against rabies with an approved vaccine as determined by the current official "Comprehendium of Animal Rabies Vaccines" published by the Conference of State Public Health Veterinarians and the Center for Disease Control of the Department of Health and Human Services. Every person convicted of a violation of this provision is guilty of a penal offense.

('72 Code, § 415:03) (Am. Ord. 1973-138(A), passed 2-26-73; Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed 10- 27-97) Penalty, see § 10.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 92.36 LICENSING EXCEPTIONS.

Each non-domesticated animal with proof of an exhibitor's license issued by the U.S.D.A. and/or the Commissioner of Natural Resources pursuant to M.S. § 97A.041 may be licensed without the vaccination requirement as stated in § 92.35 provided applicable zoning requirements as stated in this code are met. Dogs in training with or trained by a recognized program with an established curriculum for training dogs for service to persons with disabilities, and dogs and cats awaiting adoption in foster homes under a recognized pet adoption program, are exempt from the license requirements in this section. To qualify for an exemption the programs must be approved by the Animal Control Officer or designated person.

('72 Code, § 415:04) (Ord. 1993-738, passed 11-8-93; Am. Ord. 1997-861, passed 10-27-97)

§ 92.37 FEES AND CHARGES.

The license fee for each animal is in the amount set by the Council from time to time and in the fee appendix of this code. If the license for an animal is obtained while the animal is impounded by this municipality or after the required license period has commenced, there will be added to the regular license fee a late license penalty for an additional sum as set by the Council from time to time and the fee appendix for each such animal provided that any owner who secures an animal after the expiration of a license or any owner who has an animal at the time of becoming a resident of this municipality will be allowed 30 days to secure a license, without incurring a late-license penalty provided in this section.

('72 Code, § 415:06) (Am. Ord. 1982-385(A), passed 4-12-82; Am. Ord. 1989-626(A), passed 6-26-89)

§ 92.38 APPLICATION FOR LICENSE.

Application for an animal license must be made to the Licensing Division or person designated by the City Manager. The application must include such descriptive identification as the City Manager requires. Applicants must be of legal age. Applicants must provide a certificate issued by a doctor of veterinary medicine showing that the animal in question has been currently vaccinated against rabies, the type vaccine used, and the length of time the vaccination is effective. The license is effective for the duration of the vaccine effectiveness, as stated in the current official "Comprehendium of Animal Rabies Vaccines" published by the Conference of State Public Health Veterinarians and the Center for Disease Control of the Department of Health and Human Resources.

('72 Code, § 415:09) (Am. Ord. 1982-385(A), passed 4-12-82; Am. Ord. 1989-626(A), passed 6-26-89; Am. Ord. 1997-861, passed 10- 27-97)

DEER MANAGEMENT

§ 92.40 PROHIBITION ON DEER FEEDING.

(A) No person may place, or permit to be placed, on the ground or within four feet of the ground surface, any grain, fodder, salt licks, or any other food, including feed for birds, which may reasonably be expected to result in deer feeding, unless such items are screened or protected in a manner that prevents deer from feeding on them; except as follows:

(1) Feeding programs or efforts undertaken by the city in accordance with the deer management plan of the Department of Natural Resources;

(2) Veterinarians, city animal control officers, or county, state or federal game officials who, in the course of their duties, have deer in their custody; or

(3) Any food placed upon the property for the purpose of trapping or otherwise taking deer, where such are trapped or taken pursuant to a permit issued by the Minnesota Department of Natural Resources.

(B) No person shall hunt or otherwise engage in the hunting or removal of deer, unless such person is acting on the city's behalf and has obtained a special permit in conjunction with its Deer Management Program.

(Ord. 2001-954, passed 7-9-01)

BEEKEEPING

§ 92.50 DEFINITIONS.

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCREDITED INSTITUTION. An educational institution holding accredited status which has been licensed or registered by the Minnesota Office of Higher Education at the time the registrant obtained their certificate.

APIARY. The assembly of one or more colonies of bees on a single lot.

APIARY SITE. The lot upon which an apiary is located.

BEEKEEPER. A person who owns or has charge of one or more colonies of honey bees or a person who owns or controls a lot on which a colony is located whether or not the person is intentionally keeping honey bees.

BEEKEEPING EQUIPMENT. Anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.

COLONY. An aggregate of honey bees consisting principally of workers, but having, when perfect, one queen and at times drones, brood, combs and honey.

FLYWAY BARRIER. A barrier that raises the flight path of bees as they come and go from a hive.

HIVE. The receptacle inhabited by a colony.

HONEY BEE. All life stages of the common domestic honey bee, apis mellifera. This definition does not include wasps, hornets, African subspecies or Africanized hybrids.

NUCLEUS COLONY. A small quantity of honey bees with a queen housed in a smaller than usual hive box designed for a particular purpose, and containing no supers.

REGISTRANT. Any registered beekeeper and any person who has applied for approval of a beekeeping registration.

ROOFTOP. The uppermost section of a primary or accessory structure of at least one full story and at least 12 feet in height. Areas including but not limited to decks, patios and balconies shall not be considered a rooftop.

SUPER. A box that holds the frames where bees will store the honey.

SWARMING. The process where a queen bee leaves a colony with a large group of worker bees in order to form a new honey bee colony.

UNUSUAL AGGRESSIVE BEHAVIOR. Any instance in which unusual aggressive characteristics such as stinging or attacking without provocation occurs. Provocation is an act that an adult could reasonably expect may cause a bee to sting or attack.

(Ord. 2015-1191, passed 5-18-15)

§ 92.51 PURPOSE.

Honey bees are an asset to the community and important in the pollination of plants and in the production of honey and other products. The purpose and intent of this portion of Chapter 92 is to permit and establish requirements for the keeping of honey bee colonies, hives, and equipment within the city.

(Ord. 2015-1191, passed 5-18-15)

§ 92.52 BEEKEEPING LIMITED.

No person shall keep, harbor, maintain or allow to be kept any hive or other facility for the housing of honeybees on or in any property in the city without an approved registration unless otherwise exempted by §§ 92.54(A)(5) and 92.56(B).

(Ord. 2015-1191, passed 5-18-15)

§ 92.53 COLONY LOCATION.

(A) Hives cannot be located in the front yard and must be located a minimum of ten feet from the rear or side property lines and 20 feet from public rights-of-way unless further restricted elsewhere in this code. A corner lot shall be considered to have two front yards.

(B) Hives must be located a minimum of ten feet from any adjacent dwelling unit.

(C) Except as otherwise provided in this section, in each instance where any part of a hive is kept within 25 feet of a lot line of the apiary site, a flyway barrier of at least six feet in height must be constructed.

(1) The flyway barrier must consist of a wall, fence, or dense vegetation that requires honey bees to fly over, rather than through, the barrier.

(2) If a dense vegetation flyway barrier is used, the initial planting may be a minimum of four feet in height, but the vegetation must reach a height of at least six feet within two years after installation.

(3) If a wall or fence flyway barrier is used, the materials must be decay resistant, maintained in good condition and constructed in accordance with §§ 152.291 through 152.293 of this code.

(4) The flyway barrier must continue parallel to the lot line of the apiary site for at least ten feet in both directions from the hive or must contain the hive or hives in an enclosure at least six feet in height.

(5) A flyway barrier is not required if the hive is located on a rooftop.

(Ord. 2015-1191, passed 5-18-15)

§ 92.54 COLONY DENSITY.

(A) Every lot or parcel of land in the city shall be limited to the following number of colonies based on the size of the apiary lot:

(1) One-half acre or smaller is allowed two colonies;

(2) More than one-half acre to three-quarters of an acre is allowed four colonies;

(3) More than three-quarters of an acre to one acre is allowed six colonies;

(4) More than one acre to five acres is allowed eight colonies;

(5) More than five acres, there is no restriction on the number of colonies and no registration is required.

(B) If any beekeeper serves the community by removing a swarm or swarms of honeybees from locations where they are not desired, that person shall not be considered in violation of the colony density restrictions in this section if the following conditions are met:

(1) The person temporarily houses the honeybees at an apiary site of a beekeeper registered with the city;

(2) The bees are not kept for more than 30 days; and

(3) The site remains in compliance with the other provisions of this section.

(Ord. 2015-1191, passed 5-18-15)

§ 92.55 REQUIRED CONDITIONS.

(A) Honey bee colonies shall be kept in hives with removable frames, which shall be kept in sound and useable condition.

(B) Each colony on the apiary site shall be provided with a convenient source of water which must be located within ten feet of each active colony.

(C) Materials from a hive such as wax combs or other materials that might encourage robbing by other bees shall be promptly disposed of in a sealed container or placed within a building or other bee and vermin proof enclosure.

(D) For each colony permitted to be maintained, there may also be maintained upon the same apiary lot, one nucleus colony in a hive structure not to exceed one standard nine and five-eighths-inch depth box, ten frame hive body with no supers.

(E) Beekeeping equipment must be maintained in good condition, including keeping the hives free of chipped and peeling paint if painted, and any unused equipment must be stored in an enclosed structure.

(F) Hives shall be continuously managed to provide adequate living space for their resident honeybees in order to prevent swarming.

(G) In any instance in which a colony exhibits unusual aggressive behavior, it shall be the duty of the beekeeper to promptly re-queen the colony.

(H) Honey may not be sold from any residential property unless a home occupation permit has been obtained and required conditions met in accordance with § 152.262(B) of this code.

(Ord. 2015-1191, passed 5-18-15)

§ 92.56 REGISTRATION REQUIRED.

(A) The application for registration must be upon a form provided by the city. All required information must be complete.

(B) Each apiary site must apply for registration and receive approval prior to bringing any honey bees into the city. Registration is not required for sites over five acres in size.

(C) If the beekeeper relocates a hive or colony to a new apiary site, the beekeeper shall apply for an updated registration, prior to the relocation, on the form provided by the city.

(D) The beekeeping registration shall be valid until March 31 of each calendar year following initial issuance and must be renewed by the registrant prior to expiration each year by submitting a renewal form to the Community Development Department on the form provided by the city.

(E) Upon receipt of an application for initial registration, the city will send written notice to all owners of properties located within 200 feet of the property line of the apiary site(s) identified on the application. Any objections to the registration must be made in writing and received within 14 days of mailing the notice. If any written objection is received, the registration application must be referred to the City Manager.

(1) The registration application must be denied if the city receives a written objection from a resident living within the designated notification area that includes medical documentation by a licensed physician of an allergy to honey bee venom.

(F) Beekeeping training and education is required for the beekeeper prior to the issuance of the initial beekeeping permit by the city. At the time of application for registration, the beekeeper must submit a certificate of completion of a honey beekeeping course from an accredited Minnesota institution.

(G) The fees for the registration will be determined by the City Council in the city's fee schedule.

(H) The property must be in compliance with all other applicable city regulations in order to receive approval and renewal.

(I) If the standards of practice are not maintained subsequent to issuance of a beekeeping permit, the permit may be revoked by the City Manager.

(J) Beekeepers operating in the city prior to the effective date of the section will have until July 1, 2015 to apply for registration.

(Ord. 2015-1191, passed 5-18-15)

§ 92.57 INSPECTION.

(A) Upon initial registration, annual renewal or any updated registration, each beekeeper must allow for an inspection of the site.

(B) Upon prior notice to the owner of the apiary site, city staff shall have the right to inspect any apiary.

(C) In the case of a complaint regarding the apiary, the apiary site may be inspected without prior notice.

(Ord. 2015-1191, passed 5-18-15)

§ 92.58 APPEAL AND HEARING PROCEDURE.

(A) Registrations issued under this section may be denied, revoked or non-renewed due to any of the following:

(1) The keeping of honey bees in a manner which constitutes a nuisance to the health, safety or general welfare of the public;

(2) Fraud, misrepresentation, or a false statement contained in the registration application or during the course of the registered activity;

(3) Any violation of the applicable provisions in this chapter.

(B) Notice of approval, denial, revocation or non-renewal must be made in writing to the registrant and to any person opposing the application for initial registration specifying the reason(s) for the action. The registrant or any person opposing the application may request a hearing within 14 days of the date of the notification letter.

(C) A hearing officer shall hold a hearing on a contested approval, denial, revocation, or non-renewal. The hearing officer shall be a person appointed by the city. At the hearing, the applicant and any person objecting to the application for initial registration may

speak and may present witnesses and other evidence. Upon the conclusion of the hearing, the hearing officer shall issue a written decision that includes findings of fact. The city shall provide the registrant and any objecting party with a copy of the hearing officer's decision. The registrant may appeal the hearing officer's decision in accordance with state law.

(Ord. 2015-1191, passed 5-18-15)

CHAPTER 93: FIRE PREVENTION AND PROTECTION

Section

GENERAL PROVISIONS

§ 93.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

CORPORATION COUNSEL. As used in the MSFC, it means the City Attorney of Brooklyn Park.

MUNICIPALITY or ***JURISDICTION.*** As used in the MSFC Code, it means the City of Brooklyn Park.

THIS CODE. As used in the IFC or this chapter, it means the code adopted pursuant to this chapter.

('72 Code, § 225:72) (Am. Ord. 1995-784, passed 7-10-95; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.02 CODE ENFORCEMENT.

The Fire Marshal and investigators/inspectors appointed to assist the Fire Marshal, must enforce all statutes, ordinances and codes aimed at fire prevention and may achieve enforcement through the issuance of notices, warning tickets or citations in lieu of arrest or

detention.

('72 Code, § 225:70)

§ 93.03 FALSE ALARMS.

It is unlawful for any person to give or make, or cause to be given or made, an alarm or fire without probable cause, or to neglect or refuse to obey any reasonable order of the Chief at a fire, or to interfere with the Fire Department in the discharge of its duties.

('72 Code, § 225:60) Penalty, see § 93.99

§ 93.04 STORAGE OF FLAMMABLES, EXPLOSIVES, AND THE LIKE.

(A) *Establishment of limits of district in which storage of flammable or combustible liquids in outside above-ground tanks is to be prohibited.*

(1) The limits referred to in Section 3404.2.9.5 of the IFC in which storage of flammable and/or combustible liquids in outside above-ground tanks is prohibited are established as follows: All districts except where it is allowed as a permitted use by the zoning code.

(2) The limits referred to in Section 3406.2.4.4 of the IFC in which special operations for flammable and/or combustible liquids are prohibited are hereby established as follows: All districts except where it is allowed as a permitted use by the zoning code.

(B) *Establishment of limits of district in which bulk storage of liquified petroleum gases is to be prohibited.* The limits referred to in Section 3804.2 of the IFC, in which bulk storage of liquified petroleum is prohibited, are hereby established as follows: All districts except where it is allowed as a permitted use by the zoning code.

(C) *Establishment of limits of districts in which storage of explosives and blasting agents is to be prohibited.* The limits referred to in Section 3304.5 of the IFC, in which storage of explosives and blasting agents is prohibited, are hereby established as follows: All districts except where it is allowed as a permitted use by the zoning code.

(D) *Establishment of limits of districts in which storage of stationary tanks of flammable cryogenic fluids is to be prohibited.* The limits referred to in Section 3204.3.1.1 of the IFC, in which storage of flammable cryogenic fluids in stationary containers is prohibited, are hereby established as follows: All districts except where it is allowed as a permitted use by the zoning code.

('72 Code, §§225:74 - 225:79) (Am. Ord. 1985-505(A), passed 12-2-85; Am. Ord. 1995-784, passed 7-10-95; Am. Ord. 1998-889, passed 10-12-98; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 93.99

§ 93.05 INTERFERENCE WITH FIRE DEPARTMENT DUTIES.

It is unlawful for an unauthorized person to ride upon, race with, trail or follow within 300 feet of any apparatus belonging to the Fire Department when such apparatus is actively responding to an emergency call.

('72 Code, § 225:80) Penalty, see § 93.99

§ 93.06 PROTECTION OF FIRE HOSES.

It is unlawful to drive any vehicle over a fire hose except upon specific orders from a member of the Police or Fire Departments of the city, and then only with due caution.

('72 Code, § 225:82) Penalty, see § 93.99

§ 93.07 PARKING NEAR FIRE EQUIPMENT.

It is unlawful to park any vehicle or place any material or other obstruction within 20 feet of the entrance to any fire station or within ten feet of any fire hydrant or fire cistern. It is unlawful to park any vehicle within 300 feet of a place where a fire requiring fire fighting by the Fire Department is in progress.

('72 Code, § 225:84) (Ord. 1976-218(A), passed 2-9-76) Penalty, see § 93.99

§ 93.08 AUTHORIZED USE OF FIRE EQUIPMENT.

It is unlawful to use any fire apparatus or equipment for any reason except as such as may be designated by the Chief of the Fire Department.

('72 Code, § 225:86) (Ord. 1976-218(A), passed 2-9-76) Penalty, see § 93.99

§ 93.09 FEES.

(A) Licenses, permits, service fees, inspection fees and charges shall be in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code.

('72 Code, § 225:88) (Ord. 1976-218(A), passed 2-9-76)

(B) Upon application for a key box, a fee must be paid for the city to supply each key box. The fee shall be determined by the Fire Chief on the basis of the actual costs to the city.

(C) *Fire suppression system / fire alarm system permit; fees required.* The installation of any fire suppression system/fire alarm system, equipment or device(s) requires payment by the applicant of fees in the amount provided by the fee resolution, set forth in the Appendix to this code.

(D) No permit will be issued until the applicant files with the Fire Chief or the Fire Chief's designee a complete set of plans and permit application with appropriate fees and the Fire Chief or the Fire Chief's designee gives final approval.

(Am. Ord. 2003-1010, passed 12-1-03)

Cross-reference:

License fees, see Appendix

§ 93.10 D.C. WELDERS FOR THAWING FROZEN WATERLINES.

(A) It is unlawful to use an electric welding machine within the limits of the city for purposes of thawing frozen watermains or services.

(B) It is unlawful to make any connection from an electric welding machine to any watermain, service, or any appurtenance thereto within the city.

(C) Exception: Unless the person and/or company obtains a permit from Public Works Division. The person and/or company must show proof of liability and property damage, minimum insurance of $500,000. Before any machine is turned on, a continuity test must be conducted to ensure proper connection of the effective water pipe.

('72 Code, § 225:106) (Ord. 1982-395(A), passed 7-26-82; Am. Ord. 1990-668(A), passed 12-17-90) Penalty, see § 93.99

§ 93.11 OPEN FLAME HEATERS BANNED.

It is unlawful for any owner or occupant of any structure containing three or more residential units to maintain in an operable condition or operate within a garage, whether attached or detached, used as an accessory use to such residential unit, the following:

(A) An open flame-type heater or stove.

(B) Welding or torch cutting equipment.

(C) Any other equipment utilizing an open flame.

('72 Code, § 225:108) (Am. Ord. 1982-395(A), passed 7-26-82) Penalty, see § 93.99

§ 93.12 FIRES OR BARBECUES ON BALCONIES OR PATIOS.

(A) *Open flame prohibited.* In any structure containing two or more vertically stacked dwelling units, it is unlawful to kindle, maintain, or cause any fire or open flame on any balcony above ground level, or on any ground floor patio within 15 feet of the structure.

(B) *Fuel storage prohibited.* It is unlawful to store or use any fuel, barbecue, torch, or other similar heating or lighting chemical or device in the locations designated in division (A) of this section.

(C) *Exceptions.* Listed electric or gas-fired barbecue grills that are permanently mounted and wired or plumbed to the building's gas supply or electrical system and that maintain a minimum clearance of 18 inches on all sides, unless listed for lesser clearances, may be installed on balcony and patios when approved by the Chief.

('72 Code, § 225:110) (Am. Ord. 1987-586(A), passed 12-21-87; Am. Ord. 1990-668(A), passed 12-17-90; Am. Ord. 1995-784, passed 7-10-95) Penalty, see § 93.99

§ 93.13 PUBLIC SAFETY 800 MHz RADIO BUILDING AMPLIFICATION SYSTEM.

(A) *General.* Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to, any building or structure or any part thereof, or cause the same to be done which fails to support adequate radio coverage for the Minnesota Regional Radio Communications System, including but not limited to firefighters and police officers. This section shall not apply to: buildings of less than 8,500 square feet, or any building constructed of wood frame; provided none of the aforementioned buildings make use of any metal construction or any below-grade levels or parking areas. Any part of any R-3 occupancy building, including below-grade levels and parking areas, is exempt from the requirements of this section. For the purposes of this section, parking structures and stairwells are included in the definition of "building" and stair shafts and elevators are included in the definition of "all parts of the building." For purposes of this section, adequate radio coverage shall be an average received field strength of no less than -93 dBm, or 1% BER, measured at 30 to 36 inches above the floor over 90% of the area of each floor and other critical areas determined by the Fire Chief or the Fire Chief's designee such as fire command centers, stairwells, elevators, high hazard areas, basements, and parking areas. Without an in-building radio system, only the received signal level standard must be achieved as the talk-out path is equivalent to the talk-in path in this regional radio system.

(B) *Amplification systems allowed.* Buildings and structures which cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with or without FCC type accepted bi-directional 800 MHz amplification as needed. If amplification is used in the system, all required FCC authorizations must be obtained prior to the use of the system. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input.

(C) *Testing procedures.*

(1) *Acceptance test procedure.* With or without an in-building radio system, it will be the building owner's responsibility to have the regional radio system performance tested to ensure that two-way coverage on each floor of the building is a minimum of 90% of the total floor area and the critical areas designated.

Talk-in From the Regional Radio System Coverage Testing

The talk-in coverage testing process shall be the same for buildings with and without in-building amplification systems.

During test measuring, the center of the test equipment receive antenna shall be between 30 and 36 inches above the floor.

On each floor of a building to be tested, the floor space, except for designated critical areas, shall be divided into square or rectangular areas of approximately the same size and shape. Each floor shall have at least ten grid areas; however, the maximum size of grid areas shall not exceed 2,500 square feet. In buildings with support columns laid out in a grid, the corners of each grid may be arranged at the columns for ease in identifying grid corners while testing is in progress. In buildings, such as a warehouse, with large open areas, tests shall be conducted near the center of each grid although the exact center may not be easily accessible due to the location

of large machinery, storage racks, and the like. In buildings with divided office spaces, with or without floor to ceiling patricians, tests shall be conducted in an office at or near the center of a grid. In buildings with a large open area and an attached two-story, split-level office or other area, the lower level of the two-story, split-level attachment shall be considered as an extension of the large open area.

In multi-story buildings and parking ramps, testing shall begin at the lowest level, including any subgrade level(s), and continue up one floor at a time. In-building amplification may only be required on the lowest level or levels of a multi-story building or parking ramp.

Average radio signal field strength shall be measured and recorded in each grid and in each designated critical area defined above. Average field strength may be obtained through use of an instantaneous measuring instrument and a computer that samples the actual field strength at very short time intervals and averages the sample values. As an alternative, a field strength measuring instrument with an analog or digital readout of average field strength may also be used. Measurements shall be made while the measuring instrument is moved over a distance of four to ten feet. If the average field strength varies over the measurement path, the lowest (most negative) value shall be recorded. The test instrumentation used shall have been calibrated within the six-month period prior to the testing.

The percentage of area passed shall be calculated as 100 times the result of dividing the number of grids and critical areas that are at least at -93 dBm or 1% BER by the total number of grids and critical areas tested.

The donor antenna in an in-building amplification system may receive up to 87 800 MHz radio frequencies of approximately equal field strength from the regional system, plus some others of approximately equal field strength from other radio systems. At any time, the donor antenna may be receiving at least 60 radio frequencies of approximately equal level in the pass band ranges. For that reason, it shall be assumed that the output level of talk-in amplifiers will be at + 3.2 dBm per channel maximum. Therefore, grid and critical areas tests shall be conducted while the head end amplifier is disconnected and a signal of + 3.2 dBm is inserted into the connector downstream from the headend amplifier.

Any in-building talk-in amplification system shall have pass band filters before the input to the first (headend) amplifier that shall pass 806 to 817 MHz and 821 to 824 MHz only. In the future, within six months after notification by the Fire Chief or the Fire Chief's designee, the pass band filter frequency range shall be changed in accordance with instructions, or an additional pass band filter for 700 MHz band frequencies shall be added. When the donor antenna is installed, the average signal level received on the Hennepin East site control channel shall be measured at the antenna connector. A signal at that average received signal level shall be inserted into the cable to the headend amplifier and filter while the output level of the headend amplifier is measured, and the output level of the amplifier shall be set at + 29 + 1 dBm.

Alternative in-building amplification systems that do not involve broadband pass band filters will be accepted provided that similar testing can be demonstrated.

Talk-out to the Regional Radio System Testing

With an in-building amplification system, the talk-out (to the regional 800 MHz radio system) shall be measured at the same grid and critical area locations as the talk-in measurements were made. The measurements shall be made using a three-watt portable radio with a well-charged battery to transmit into the in-building radio system while field strength is measured out of the connector that is normally attached to the donor antenna. To pass, the field strength at the donor antenna shall be the measured value at the connector plus the donor antenna gain and minus a free space loss factor. The free space loss factor shall be -93 dB for a distance of one mile to the nearest Hennepin East base radio location, adjusted by 6 dB each time the distance is halved or doubled. The acceptable range for passing shall be between -65 and -95 dBm.

Gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified each year during the annual tests. In the event that the measurement results become lost, the building owner will be required to rerun the acceptance test to reestablish the gain values.

(2) *Annual tests.* When an in-building radio system is required, the building owner shall test all active components of the system, including but not limited to amplifiers, power supplies and backup batteries, a minimum of once every 12 months. Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance. Backup batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one-hour test period, in the opinion of the testing technician, the battery exhibits symptoms of failure, the test shall be extended for additional one-hour periods until the testing technician confirms the integrity of the battery. All other active components shall be checked to determine that they are operating within the manufacturer's specifications for the intended purpose.

(3) *Five-year tests.* In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five years to ensure that the radio system continues to meet the requirements of the original acceptance test. A radio test shall also be performed whenever there is a change in or to the building that may have an impact on coverage. Examples of the types of

changes that may change radio coverage are interior remodeling that adds and/or changes partitions, removal of windows, and the addition of metalized treatment to window surfaces. The procedure described in division (C)(1) shall be used for these tests.

(4) *Qualifications of testing personnel.* All tests shall be conducted, documented and signed by qualified and competent personnel that includes: persons in possession of a current FCC license, or a current technician certification issued by the Associated Public-Safety Communications Officials International (APCO) or the Personal Communications Industry Association (PCIA), or a qualified radio engineer licensed as a registered professional engineer by the State of Minnesota. Testing personnel shall have test equipment that is appropriate for the testing procedure, and that test equipment shall have been calibrated within six months prior to the testing. All test records shall be retained on the inspected premises by the building owner and a copy shall be submitted to Fire Department officials.

(5) *Field testing.* Fire and police personnel, after providing reasonable notice to the owner or the owner's representative, shall have the right to enter onto the property to conduct testing to be certain that the required level of radio coverage is present.

(Ord. 2003-1010, passed 12-1-03)

INTERNATIONAL FIRE CODE

§ 93.25 ADOPTION OF INTERNATIONAL FIRE CODE.

International Fire Code adopted. The International Fire Code as promulgated by the International Code Council, Inc. (2006 Edition) together with Appendices B, C, D, E, F and G and the 2007 State of Minnesota amendments is adopted by reference and incorporated into the city code in whole as if herein set out in full, subject to deletions or modifications contained in this chapter.

('72 Code, § 225:65) (Am. Ord. 1990-668(A), passed 12-17-90; Am. Ord. 1995-784, passed 7-10-95; Am. Ord. 1998-889, passed 10-12-98; Am. Ord. 2003-1010, passed 12-1-03; Am. Ord. 2007-1077, passed 8-20-07; Am. Ord. 2009-1099, passed 5-4-09) Penalty, see § 93.99

§ 93.26 AMENDMENTS TO INTERNATIONAL FIRE CODE.

Amendments made to the 2006 edition of the International Fire Code:

(A) Chapter 2, Section 202 is amended by adding the definition of "Camp Fire" to read:

"CAMP FIRE" has the same definition as a Recreational Fire.

(B) Chapter 2, Section 202 is amended by adding the definition of "Jurisdiction" to read:

"JURISDICTION" shall mean the City of Brooklyn Park.

(C) Chapter 3, Section 302.1, the definition of "Open Burning" is amended to read:

"OPEN BURNING" means a bonfire, or other fire in an outdoor location, whether concentrated or dispersed, which is not contained within a fully enclosed fire box, incinerator, outdoor fireplace, or barbecue pit, and from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct, or chimney.

(D) Chapter 2, Section 202, adding the definition of "Wood" to read:

"WOOD" means dry, clean fuel only; such as twigs, branches, limbs, "presto logs," charcoal, cordwood or untreated dimensional lumber. "Wood" does not include wood that is green, with leaves or needles, rotten, wet, oil soaked, or treated with paint, glue or preservatives.

(E) Chapter 9, Section 905.2.1 is added to read:

905.2.1 Unobstructed and unobscured. Class II standpipe hose stations, Class I and Class III standpipe outlets shall not be concealed, obstructed or impaired. A 3-foot (914.4 mm) clear space shall be maintained around the circumference of all standpipe stations and/or outlets, and valving, except as otherwise required by the Fire Chief.

(F) Chapter 9, Section 906.6 is deleted in its entirety and replaced with the following:

906.6 Unobstructed and unobscured. Fire extinguishers shall not be obstructed or obscured from view. In rooms or areas in which visual obstruction cannot be completely avoided, means shall be provided to indicate the locations of extinguishers. A 3-foot (914.4 mm) clear space shall be maintained around the circumference of all fire extinguishers, except as otherwise required by the Fire Chief.

(G) Chapter 9, Section 907.1.3 is added to read:

907.1.3 Unobstructed and unobscured. Alarm-initiating devices, alarm-signaling devices and annunciators shall not be concealed, obstructed or impaired. A 3-foot (914.4 mm) clear space shall be maintained around the circumference of fire alarm and detection equipment except as otherwise required by the Chief.

(H) Chapter 9, Section 903.4 is deleted in its entirety and replaced with the following:

903.4 Sprinkler system monitoring and alarms. All valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically supervised.

EXCEPTIONS:

1. Automatic sprinkler systems protecting one- and two-family dwellings.

2. Limited area systems serving fewer than 20 sprinklers.

3. Automatic sprinkler systems installed in accordance with 13R where a common supply main is used to supply both domestic and automatic sprinkler systems and a separate shutoff valve for the automatic sprinkler system is not provided.

4. Jocky pump control valves that are sealed or locked in the open position.

5. Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.

6. Trim valves to pressure switches in dry, preaction and deluge sprinkler systems that are sealed or locked in the open position.

(I) Chapter 9, Section 903.4.1 is deleted in its entirety and replaced with the following:

903.4.1 Signals. Alarm, supervisory, and trouble signals shall be distinctly different and shall be automatically transmitted to an approved central station as defined in National Fire Protection Association (N.F.P.A.) 72. Electrically monitoring shall require an Underwriters Laboratories (U.L.) 72 "Central Station Fire Alarm System" Certificate Service be issued on all new Fire Alarm Systems and Communicators.

EXCEPTIONS:

1. Underground key or hub valves in roadway boxes provided by the municipality or public utility are not required to be monitored.

2. Backflow prevention device test valves, located in limited area sprinkler system supply piping, shall be locked in the open position. In occupancies required to be equipped with a fire alarm system, the backflow preventer valves shall be electrically supervised by a tamper switch in accordance with N.F.P.A. 72 and separately annunciated.

(J) Chapter 9, Section 904.11.6.3 is deleted in its entirety and replaced with the following:

904.11.6.3 Cleaning. Cleaning of hoods, grease-removal devices, fans, ducts and other appurtenances shall be cleaned at intervals necessary to prevent the accumulation of grease, as specified by the Chief. The Fire Chief is authorized to issue hood cleaning permits, and is granted the authority to place conditions upon applicants requesting a hood cleaning permit as the Chief shall deem appropriate.

Those conditions are:

(1) Kitchen hoods and duct systems shall be cleaned to bare metal.

(2) There shall be no grease or carbonized grease left in the hood, duct system, filters, or fan assembly.

(3) No coatings shall be sprayed or applied on the clean ductwork after cleaning.

(4) All ductwork access panels/doors shall be properly reassembled after cleaning is completed.

(5) Any screws removed from any equipment shall be reinstalled after cleaning is completed.

(6) If any equipment is damaged, or is missing parts, the cleaning company shall notify the Chief at the time of inspection.

(K) Chapter 9, Section 904.11.6.3.1 is added to read:

904.11.6.3.1 Hood cleaning permit. Permits are required to conduct hood cleaning. Every application for such a permit shall be made in writing to the Fire Department at least five working days in advance of the date of proposed cleaning. A permit shall be issued only after the Fire Chief or the Fire Chief's designee has given approval and the applicant has paid the permit fee in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code. Upon completion of each job, the applicant shall request that an inspection and approval of work be made prior to leaving the job site. If the Fire Chief or the Fire Chief's designee does not approve the cleaning of the system and/or has to return for additional inspections, the applicant shall be required to apply for additional permits, and pay additional fees as required.

(L) Chapter 9, Section 907.15 is deleted in its entirety and replaced with the following:

907.15 Monitoring. Fire alarm systems shall be electrically monitored by an approved central station service.

Electrically monitoring shall require an Underwriters Laboratories (U.L.) 72 "Central Station Fire Alarm System" Certificate Service be issued on all new Fire Alarm Systems and Communicators.

EXCEPTIONS:

(1) For existing fire alarm systems, monitoring is required when the systems are upgraded or altered with additions.

(2) Supervisory service is not required for automatic sprinkler systems in one- and two- family dwellings.

General fire alarm, water-flow alarm, trouble, and supervisory signals shall be distinctively different and shall be automatically transmitted to an approved central station in accordance with National Fire Protection Association (N.F.P.A.) Standard 72.

(M) Chapter 3, Section 307 is deleted in its entirety and replaced with the following:

307 Open Burning.

307.1 General. Open burning shall be conducted in accordance with Section 307. Except as otherwise permitted by this section, all open burning is prohibited in the City of Brooklyn Park. The Fire Chief or the Fire Chief's designee is authorized to issue burning permits, and is granted the authority to place conditions upon applicants requesting a burning permit.

Items that will require a burning permit are:

(1) Fires purposely set under the supervision of the City Fire Department for the instruction and training of firefighting personnel.

(2) Fires set for the elimination of a fire hazard which cannot be abated by any other practical means.

(3) Fires purposely set for forest and game management purposes.

(4) The burning of trees, brush, grass and other vegetable matter in the clearing of land, the maintenance of street, road and highway right-of-way, and in accepted agricultural land management practices, located within the City of Brooklyn Park.

(5) Fires for which the Fire Chief has deemed necessary.

EXCEPTION: (1) Recreational fires shall be in accordance with Section 307.2.

307.1.1 Open burning permit. Permits are required to conduct open burning. Every application for such a permit shall be made in writing to the Fire Department at least 15 days in advance of the date of proposed burning. The permit application shall include a diagram of the grounds on which the burning is to be conducted showing the point at which the material to be burned is located; the location of buildings, highways and other lines of communication; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. The Fire Chief shall make an investigation to determine whether the proposed burning location meets the minimum requirements of Section 307 Open Burning. At the time of permit application, the Fire Chief or the Fire Chief's designee shall be consulted regarding requirements for standby fire apparatus. A permit shall be issued only after the Fire Chief or the Fire Chief's designee has given approval for the open burning and the applicant has paid the permit fee in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code. After the permit has been issued, it shall be lawful for that purpose and time period only. No permit so granted shall be transferable.

307.1.2 Notification. Prior to commencement of open burning, the Police Department shall be notified.

307.1.3 Material restrictions.

(1) No person shall conduct, cause or permit open burning of oils, petro fuels, rubber, plastics, paper, chemically treated materials or

other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, asbestos material, paint or paint filters.

(2) No person shall conduct, cause or permit open burning of hazardous waste or salvage operations, solid waste generated from an industrial or manufacturing process or from a service or commercial establishment, or building material generated from demolition of commercial or industrial structures, or discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

307.1.4 Time and atmospheric restrictions. Open burning shall only be performed when time limits comply with the time limits set forth in the open-burning permit. The prevailing wind at the time of burning and expected burning duration shall not exceed 10 mph., and must not blow towards nearby residences, or other occupied buildings, roads or high power lines which would create a hazard or nuisance.

307.1.5 Location. Open burning shall not be conducted within 600 feet (182,880 mm) of any road, high power line, or any occupied structure; other than those occupied structure(s) located on the property on which the open burning is to be conducted. Open burning shall not be conducted within one mile (1.609 km) of an airport or landing strip unless the affected airport or landing strip gives written approval. Open burning shall not be conducted within 50 feet (15,240 mm) of any other combustible material.

All combustible materials within 50 feet (15,240 mm) of the open burn site shall be eliminated prior to ignition.

307.1.6 Fire-extinguishing equipment. Appropriate fire-extinguishing equipment (as required by the Fire Chief or the Fire Chief's designee) shall be readily available for use at open-burning sites.

307.1.7 Attendance. Burning material shall be constantly attended by a person knowledgeable in the use of the fire-extinguishing equipment required in Section 307.1.6, have a copy of the burn permit at the burn site at all times, and be familiar with the permit limitations which restrict open burning. The Open Burn Fire shall be completely extinguished before the permit holder or permit holder's representative leaves the site.

307.1.8 Discontinuance. The Chief is authorized to require that open burning be immediately discontinued if the Fire Chief or the Fire Chief's designee determines that: a fire hazard exists or develops during the course of the burn: any conditions of the permit are being violated during the course of the burn; smoke emissions are or become offensive to occupants of surrounding property during the course of the burn; or a smoldering fire with no flame is present.

Any permit burn shall be extinguished within four hours of a public announcement when the Fire Chief, the Fire Chief's designee or Department of Natural Resources official has officially declared a burning ban due to potential hazardous fire conditions, or when the Minnesota Pollution Control Agency has declared an Air Quality Alert.

307.1.9 Permit holder responsibility. The permit holder is responsible for compliance and implementation of all general conditions, and special conditions as established in the permit issued. The permit holder shall be responsible for all costs incurred as a result of the burn including, but not limited to, fire suppression and administrative fees.

307.1.10 Penalty. Any person violating any provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine and/or imprisonment.

307.2 Recreational Fires.

307.2.1 General. Recreational fires shall be in accordance with Section 307.2.

307.2.2 Material restrictions.

(1) No person shall conduct, cause or permit burning of oils, petro fuels, rubber, plastics, paper, refuse, rubbish, chemically treated materials or other materials which produce excessive or noxious smoke such as tires, railroad ties, treated, painted or glued wood, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, asbestos material, paint or paint filters, leaves, or grass.

(2) No person shall conduct, cause or permit burning of hazardous waste or salvage operations, solid waste generated from an industrial or manufacturing process or from a service or commercial establishment, or building material generated from demolition of commercial or industrial structures, or discarded material resulting from the handling, processing, storage, preparation, serving or consumption of food.

307.2.3 Location. Recreational fires shall not be conducted within 25 feet (7,620 mm) of a structure, combustible materials, power lines, or property lines unless contained in a barbecue pit. Conditions which could cause a fire to spread shall be eliminated prior to ignition.

307.2.4 Fire-extinguishing equipment. Shovels, garden hoses or a fire extinguisher with a minimum 4-A rating shall be readily available for use at recreational fires.

307.2.5 Attendance. Recreational fires shall be constantly attended by a person knowledgeable in the use of fire-extinguishing equipment required by Section 307.2.5. An attendant shall supervise a recreational fire until such fire has been completely extinguished.

307.2.6 Discontinuance. The Fire Chief or the Fire Chief's designee is authorized to require that recreational fires be immediately discontinued if the Fire Chief or the Fire Chief's designee determines that: a fire hazard exists or develops during the course of the recreational fire; any conditions of this section are being violated during the course of the recreational fire; smoke emissions are or become offensive to occupants of surrounding property during the course of the recreational fire; or a smoldering fire with no flame is present. Any recreational fire shall be extinguished within four hours of a public announcement when the Fire Chief, the Fire Chief's designee or Department of Natural Resources official has officially declared a burning ban due to potential hazardous fire conditions, or when the Minnesota Pollution Control Agency has declared an Air Quality Alert.

307.2.7 Responsibility. The property owner is responsible for compliance and implementation of all general conditions, and special conditions as established for recreational fires. The property owner shall be responsible for all costs incurred as a result of the recreational fire including, but not limited to, fire suppression and administrative fees.

307.2.8 Penalty. Any person violating any provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine and/or imprisonment.

(N) Chapter 33, Section 3301.2.2 is deleted in its entirety and replaced with the following:

3301.2.2 Pyrotechnic special-effect material. Temporary storage, use/display and handling of pyrotechnic special effects material used in motion pictures, television and theatrical and group entertainment productions shall be required to obtain a permit.

(O) Chapter 33, Section 3308.1.1 is added to read:

3308.1.1 Displays. Permits are required to conduct a fireworks display. A fireworks display is only permitted when supervised by a pyrotechnic operator certified by the State Fire Marshal. Every application for such a permit shall be made in writing to the Licensing Division at least 15 days in advance of the date of display. In addition to the information required in Section 3308.2, the permit application shall include the number, type and size of the fireworks to be discharged. For proximate audience displays, the plans required by Section 3308.2 shall also show the fallout radius for each pyrotechnic device used during the display. At the time of permit application, the Fire Chief or the Fire Chief's designee shall be consulted regarding requirements for standby fire apparatus. The Licensing Division shall issue a permit only after the Fire Chief or the Fire Chief's designee has given approval for the display and the applicant has paid the permit fee in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code. After the permit has been issued, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit so granted shall be transferable.

(P) Chapter 33, Section 3308.11 is deleted in its entirety and replaced with the following:

3308.11 Retail display and sale.

3308.11.1 Definition. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

"CONSUMER FIREWORKS." Wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items that are non-explosive and non-aerial and contain 75 grams or less of chemical mixture per tube or a total of 200 grams or less for multiple tubes, snakes and glowworms, smoke devices, or tick noisemakers which include paper streamers, party poppers, string poppers, snappers, and drop pops, each consisting of not more than twenty-five hundredths (25/100) grains of explosive mixture.

3308.11.2 General. The items listed as "Consumer Fireworks" may not be used on public property (i.e. parks, roads, alleys, school property, government property, and the like). Purchasers of these fireworks must be at least 18 years of age. The age of the purchaser of these fireworks must be verified by photo identification. Consumer fireworks shall only be stored and sold in those areas or zones within the city where commercial or industrial activities are authorized under the applicable zoning laws of the city.

1. It is unlawful to use, fire or discharge any fireworks along the route of and during any parade or at any place on public assembly or in any commercial/industrial district.

2. It is unlawful at any time to throw, toss or aim any fireworks at any person, animal, vehicle or other thing or object or used in a manner that may threaten or cause possible harm to life and property.

3. It is unlawful to discharge fireworks inside a building and/or within 20 feet of any building.

4. Fireworks may not be discharged in such a manner that may create a nuisance nor between the hours of 11:00 p.m. to 7:00 a.m.. Fireworks use shall also be subject to any additional ordinances such as noise and/or assembly.

5. Juveniles may not possess fireworks unless under the direct supervision of a responsible adult.

3308.11.3 Permit application. The application for a permit shall contain the following information: name, address and telephone number of the applicant; the address of the location where the fireworks will be sold; the type of consumer fireworks to be sold; the estimated quantity of consumer fireworks that will be stored on the permitted premises. Following an inspection of the premises proposed to be permitted, the Fire Chief or the Fire Chief's designee may issue a permit if the conditions for permit approval are satisfied.

3308.11.3.1 Conditions of permit. The permit may be issued subject to the following conditions:

1. The permit is non-transferable, either to a different person or location.

2. The permit must be publicly displayed on the permitted premises.

3. The premises are subject to inspection by city employees, including police officers and Fire Department staff during normal business hours.

4. The premises must be in compliance with zoning regulations, building code and fire code.

5. Retail sales displays of fireworks shall be limited to a gross weight of 750 pounds of fireworks and packaging.

6. "No Smoking" signs must be conspicuously posted and approved fire extinguishers must be available for use.

3308.11.3.2 Permit period and permit fee. Permits shall be issued for a calendar year. The issuance of permits and the collection of fees shall be in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code.

3308.11.4 Revocation of permit. Following written notice, the Fire Chief or the Fire Chief's designee may revoke a permit for violation of this section or state law concerning the sale, use or possession of fireworks. If a permit is revoked, neither the applicant nor the permitted premises may obtain a permit for 12 months from the time of permit revocation.

3308.11.5 Penalties. Materials that violate and/or pose a threat to public safety may be confiscated and destroyed. Costs associated with the disposal shall be assessed back to the property owner or permit holder.

1. Violations of this section are misdemeanor offenses and punishable by fines of up to $1,000.00 and/or 90 days in jail.

(Q) Chapter 34, Section 3404.2.13.1.4 (Tanks abandoned in place) is deleted in its entirety.

('72 Code, § 225:65) (Ord. 1995-784, passed 7-10-95; Am. Ord. 1998-889, passed 10-12-98; Am. Ord. 2003-1010, passed 12-1-03; Am. Ord. 2006-1064, passed 10-2-06; Am. Ord. 2007-1077, passed 8-20-07; Am. Ord. 2009-1099, passed 5-4-09)

§ 93.27 COPIES ON FILE.

The Fire Chief must have one copy of the International Fire Code and one copy of amendments made to the International Fire Code referred to in §93.26 of this chapter available for public inspection.

('72 Code, § 225:65) (Am. Ord. 2003-1010, passed 12-1-03; Am. Ord. 2007-1077, passed 8-20-07)

§ 93.28 ENFORCEMENT.

The Fire Chief or the Chief's representatives are authorized to administer and enforce the provisions of this chapter. The Fire Chief may detail such members of the Fire Department as may be necessary to administer and enforce the provisions of this chapter.

('72 Code, § 225:65) (Am. Ord. 2003-1010, passed 12-1-03; Am. Ord. 2007-1077, passed 8-20-07)

§ 93.30 PURPOSE.

Wherever there is a conflict of requirements, the more restrictive governs so as to further the purpose of this subchapter in protecting the public's health, safety and welfare from the dangers of leakage of systems contents.

('72 Code, § 506:00) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.31 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

"AIR TEST." A procedure designed to assess the tightness of a tank by means of pressure applied at not less than 3 pounds per square inch and not more than 5 pounds per square inch for a period of 60 minutes soaping all seams and joint(s) and inspecting for bubbles; all pipe (except pipefill) by means of pressure applied at not less than 50 pounds per square inch for a period of 60 minutes, soaping all joints and inspecting for bubbles, and all manufacturer's recommendations.

"APPURTENANCES." Devices such as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of liquid substances to or from an underground storage tank. This includes vent piping.

"BOTTOM HOLD-DOWN PAD." A pad of reinforced concrete a minimum of 8 inches thick with a minimum of number six reinforcement rods located every 12 inches criss-cross, wire tied at each crossing of re-rods. The pad must extend a minimum of 18 inches beyond the tank(s) side(s) and one foot beyond each end. The thickness of the pad, as well as the number and size of the reinforcement rods and anchors must be calculated for each installation and may exceed the minimum requirements.

"BUILDING." Any structure used or intended for supporting or sheltering any use or occupancy.

"CATHODIC PROTECTION." The technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For the purpose of protecting the host tank(s) and all piping from corrosion.

"CATHODIC PROTECTION TESTER." A person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"DWELLING." A building that contains one or two dwelling units used, intended, or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

"FIBERGLASS." This includes, in addition to its normal meaning, fiberglass reinforced plastic.

"FIRE CHIEF." The Fire Chief of the Brooklyn Park Fire Department, or the Chief's authorized representative.

"INTERNATIONAL FIRE CODE." That certain code and standards adopted pursuant to §93.25 et seq.

"LOT." A parcel of land occupied or used or intended for occupancy or use for a purpose permitted, abutting on a public street, and of sufficient size to provide the yards and area required by ordinance.

"OPERATOR." A person who is in control of or having responsibility for the daily operation of a underground liquid storage system(s), and who is responsible for any work done thereon or a person who was in control of or had responsibility for the daily operation of a underground liquid storage system(s) immediately before discontinuation of its use.

"OWNER." A person who holds title to, controls, or possesses an interest in a tank. "Owner" does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

"PERSON." An individual, partnership, association, public or private corporation, or other entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

"REPAIR." The correction, restoration, modification, or upgrading of a underground liquid storage system, including but not limited to, the addition of cathodic protection systems, the addition of leak detection or containment systems, the replacement of piping, valves, fill pipes or vents, the lining of a tank through the application of materials such as epoxy resins, or any other similar activities that may affect the integrity of the underground liquid storage system. This includes any activity or thing done to enhance or assure the tightness of the tank, appurtenances and containment of leaks. The terms "alteration" and "repair" do not apply to ordinary maintenance to pipes, vents and equipment necessary for the proper operation of a tank and located above the ground surface, so long as the procedure could not or will not tend to cause the uncontrolled release of contents of the tank, appurtenances or failure of any of its leak detection or containment systems.

"SECONDARY CONTAINMENT." A tank fabricated in strict conformance with Underwriters' Laboratories, Inc., standard U.L. 58 as a Type I tank wrapped by an exterior steel shell that is in direct contact with the primary tank, or a tank fabricated in strict conformance with Underwriters' Laboratories, Inc., standard U.L. 1316 as a glass-fiber- reinforced plastic (fiberglass) doublewall tank, or a tank fabricated in strict conformance with the Association of Composite Tanks ACT-100 for composite doublewall type tanks. The exterior shell must be wrapped around the full 360 degrees of the primary tank circumference. All piping used for the distribution of liquid from a tank must be enclosed in an exterior pipe so designed and installed that if the primary piping were to leak the exterior piping would contain the liquid.

"TANK TIGHTNESS TESTING." A test capable of detecting a 0.1 gallon per hour leak rate from any part of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

"UNDERGROUND LIQUID STORAGE SYSTEM, UNDERGROUND STORAGE TANK or TANK." Any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of liquid substances deemed by the city to pose a threat to the public's health, safety or welfare. The volume of which, including the volume of the underground pipes connected to them, is 10% or more beneath the surface of the ground, this does not include septic tanks.

('72 Code, § 506:01) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.32 VIOLATION.

After January 1, 1994, an underground liquid storage system must not be installed in violation of this subchapter nor must any tank installed after January 1, 1994 be altered, repaired or allowed to remain in the City of Brooklyn Park in violation of this subchapter. It is a violation of this subchapter to permit, allow, aid, advise or cause a person to perform an act which is in violation of this subchapter or to fail to perform an act required by this subchapter.

(A) Each day that a violation of this subchapter continues constitutes a separate offense.

(B) An election by the city to criminally prosecute for violations of this section does not prevent the city from proceeding with any other remedy available to the city for such a violation, and vice versa, and the city may pursue any and all available remedies simultaneously and while any other person, agency, or governmental subdivision is pursuing any remedy available as a result of the activity or violation.

(C) The Fire Chief may revoke a license that was issued to perform the work as required by this subchapter. The revocation is for 365 days from the date of the violation.

('72 Code, § 506:05) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.33 EXCEPTION.

The provisions of this subchapter do not apply to:

(A) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(B) Tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(C) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 USC, Chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 USC, Chapter 29;

(D) Surface impoundments, pits, ponds, or lagoons;

(E) Storm water or waste water collection systems;

(F) Flow-through process tanks;

(G) Tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor;

(H) Septic tanks;

(I) Tanks used for storing liquids that are gaseous at atmospheric temperature and pressure; or

(J) Tanks used for storing agricultural chemicals regulated under Chapter 18B, 18C, or 18D.

('72 Code, § 506:10) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.34 INSTALLATION, ALTERATION, REPAIR OR REMOVAL PERMITS.

(A) The installation, alteration, repair or removal of any underground liquid storage system governed by this subchapter requires permits issued pursuant to the provisions of the International Fire Code and any other applicable code, ordinance, statute or rule.

(B) *Permits and fees*. The issuance of permits and the collection of fees shall be in accordance with the fee schedule adopted by the City Council in the amount provided by the fee resolution, set forth in the Appendix to this code.

(C) The Fire Chief may deny a permit to persons not capable of performing pursuant to ordinance requirements.

('72 Code, § 506:15) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.35 PERMITS; GENERAL PROVISIONS.

(A) The application for any permit required by this subchapter must contain as a minimum and in addition to any further information the city may require, the following:

(1) The address and legal description of the property on which the underground liquid storage system is or will be located;

(2) The name and address of each owner of the property;

(3) The name and address of each owner of the underground liquid storage system for which a permit is desired;

(4) The name and address of the operator who will be responsible for the maintenance and upkeep of the underground storage system(s) and who is legally constituted and empowered to receive service of notice of violation of the provisions of city ordinances, to receive orders, to institute remedial action to affect such orders, to accept all service of process pursuant to law and to be available to be contacted by the city in the case of an emergency. The Fire Chief must be notified immediately in writing of any change of required operator information;

(5) The actual or anticipated contents of the underground liquid storage tank(s);

(6) The purpose for which the permit is requested;

(7) The name and address of the applicant and the applicant's relationship to the owners of the underground liquid storage tank(s);

(8) The location of any records required to be maintained pursuant to this subchapter;

(9) The resin composition used in the manufacture of the fiberglass tank, if fiberglass, together with a listing of compatible product types;

(10) A current copy of the contractor's certificate of certification approved by the Minnesota Pollution Control Agency;

(11) A report containing the highest known or calculated water table. As referenced in the 100-year flood plain plan for the city, for the proposed tank location.

(B) If any of the information contained in the application required by division (A) above changes before the granting or expiration of the permit, the applicant or permittee, as the case may be, must notify the Fire Chief of any such change. Every permittee must respond in writing to the Fire Chief within 72 hours of the Fire Chief's inquiry concerning the ownership or control of any underground liquid storage system, the land on which it is located, or the activity for which the permit was granted.

('72 Code, § 506:20) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.36 QUALIFICATIONS FOR LICENSEE.

(A) The Fire Chief may investigate applicants and applications for all licenses required by this subchapter.

(B) The Fire Chief may deny any application for license required by this subchapter for just cause.

(C) It is unlawful for a person, firm, or corporation, including subcontractors, to engage in the business of installing, maintaining, altering, repairing or removing any underground liquid storage system without first having procured a license therefore as herein provided.

(D) Licenses are issued only to contractors who have been approved by the Minnesota Pollution Control Agency as a certified contractor, pursuant to M.S. § 116.491 Subd. (1), to enable them to install, maintain, alter, repair or remove underground liquid storage systems.

(E) Applications for licenses must be made to the Licensing Division and the license will be granted upon proof of the applicant's qualifications therefor and upon filing a bond in the amount of $2,000 and the Fire Chief's approval conditioned upon compliance with the provisions of this subchapter.

(F) The provisions of § 110.37 of this code apply to licenses issued pursuant to this section, which licenses expire on December 31 next following the date of issuance.

('72 Code, § 506:25) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.37 INSTALLATION, ALTERATION, REPAIR OR REMOVAL REQUIREMENTS.

(A) The installation, use, alteration, repair, or removal of all underground liquid storage systems installed after January 1, 1994 must comply with all codes, statutes, ordinances and rules that may be applicable thereto including, but not limited to, the International Fire Code, M.S. § 116.46 through 116.491 and Minn. Rules, Chapters 7105, "Underground Storage Tanks; Training", and 7150, "Underground Storage Tanks; Program."

(B) For any installation, alteration, repair or removal of an underground liquid storage system, two sets of plans and specifications and pertinent explanatory data including, but not limited to, health and safety features must be submitted to the Fire Chief for approval relative to design, operation, maintenance, installation, repair, alteration, or removal of any underground liquid storage system. Such plans must show, in addition to any other information deemed appropriate by the city, the following in a scale of not smaller than one inch to equal 20 feet:

(1) A layout of the entire lot on which the underground liquid storage tank is or is to be located together with adjacent properties, distances from the lot lines to the underground liquid storage tank, the location of other features which may be affected by the underground liquid storage tank including, but not limited to, other such tanks on the lot, buildings, water supply systems, wells, buried sewers and sewage systems, utilities, and other features that could be contaminated within 50 feet of the tank.

(2) All dimensions and capacities of the underground liquid storage tank(s).

(3) The type of tank and pipe material, overfill, overspill, and leak detection.

(C) Installations, alterations, repairs, or removals must be conducted in conformity with the approved plans. Deviations from the plans must be approved by the Fire Chief before construction and after the filing of a supplementary plan covering that portion of the work involved and conforming to the provisions of this subchapter.

(D) Location and installation of the underground liquid storage tank(s) and each part thereof must be such that it will function in a sound manner and will not create a nuisance nor endanger the safety of any water supply or utility or create any other health hazard. In determining a suitable location for the underground liquid storage tank(s), consideration must be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, depth to groundwater, geology, proximity to existing or future water supplies

and other utilities, accessibility for maintenance and possible expansion.

(E) Contents of an underground liquid storage tank(s) must not be discharged to the ground surface, abandoned wells or bodies of surface water, or into any rock formation, or into any well or any other excavation in the ground.

(F) Underground liquid storage tanks must not be installed in any area deemed by the city to pose a threat to the public's health, safety or welfare, such as low or swampy areas, areas which may be subject to flooding, or other conditions, soil or otherwise, which could create the potential for violation of the conditions of this section without the installer providing proof acceptable to the city that any such condition present or likely to be present will not pose such a threat or will be neutralized so as to substantially eliminate such a threat.

(G) (1) The bottom of the trench in which an underground liquid storage tank is located must be not less than four feet above the highest known or calculated water table, as referenced in the 100-year flood plain plan for the city.

(2) Exception: Underground liquid storage tanks may be installed at or below the highest known or calculated water table if the tanks are mechanically anchored in place with bottom hold-down pads to prevent tanks, either full or empty, from floating - during a rise in water level - up to the established maximum flood stage.

(H) All underground liquid storage tanks constructed of steel, fiberglass or composite construction must comply with the manufacturers specifications for construction. All underground liquid storage tanks must have affixed to each tank a Underwriters' Laboratories, Inc., label listing the tank for its intended use.

(I) All fiberglass tanks must have a deflector plate installed within the tank beneath the fill lines.

(J) Fiberglass tanks must only be used for the storage of liquids that will not adversely affect the integrity of the tank by chemically breaking down the fiberglass material.

(K) Underground liquid storage systems must be installed pursuant to the Minnesota State Fire Code, Bulletin 1615 (November 1987) of the American Petroleum Institute and all manufacturer's recommendations.

(L) Each underground liquid storage system must be provided with a secondary containment system, the design of which must be as follows:

(1) Tanks must be double-wall 360 degree wrap, to provide secondary containment, installed and tested in accordance with the manufacturers recommendations. Double wall tanks must be so constructed with manways that permit access to piping and inner tank.

(2) Piping must be double-wall, installed and tested in accordance with the manufacturer's recommendations. All requirements for trenching, cathodic protection and testing must be strictly adhered to. Secondary containment of the piping must be provided with continuous interstitial monitoring for leak detection with monthly documentation.

(3) Exception: Vent piping does not require secondary containment.

(M) All tanks must be back-filled with clean sand or washed pea gravel, dependent upon the tank manufacturer's requirements.

(N) (1) Overfill protection must be provided including, but not limited to, the installation of equipment that will automatically shut off flow into the tank when the tank is no more than 95% full; or by alerting the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.

(2) Exception: Overfill protection does not apply to underground waste oil systems.

(O) Spill protection must be provided including, but not limited to, the installation of equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe, such as a spill catchment basin.

(P) All steel tanks and piping must be cathodically protected and must comply with the following requirements to ensure that releases due to corrosion or structural failure are prevented for as long as the underground liquid storage system is in use or temporarily out-of-service:

(1) All piping and venting capable of being corroded and connected to and associated with an underground liquid storage tank must be protected from corrosion in the same manner, as nearly as possible, as the tank itself.

(2) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of the part of the tank and piping that is in contact with the ground.

(3) All underground liquid storage systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester according the following requirements:

(a) All cathodic protection systems must be tested within six months of installation and at least every three years after that.

(b) The criteria that are used to determine that cathodic protection is adequate as required by this subchapter must be according to the code of practice in National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.

(4) All underground liquid storage systems equipped with impressed current cathodic protection systems must be inspected every 60 days to ensure the equipment is running properly.

(5) All metal piping must be isolated from the tank(s) so as to prevent the corrosion of one affecting the other.

(6) Exception: Tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage is located upon or above the surface of the floor, do not require corrosion protection.

(Q) (1) An underground liquid storage tank must not be located within ten feet of any lot line or building.

(2) Exception: This division does not apply to tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage is located upon or above the surface of the floor.

('72 Code, § 506:30) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.38 INSPECTIONS.

(A) The installation, use, repair, alteration or removal of any underground liquid storage system governed by this subchapter must be inspected by the Fire Chief pursuant to such schedules as is deemed appropriate or as designated in the codes, statutes, ordinances and rules governing such activity.

(B) No permit required by this subchapter will be issued unless the permittee agrees in an application to permit inspections.

(C) The city has authority to inspect activities authorized by the permit at any reasonable time during the construction of an underground liquid storage system and thereafter to determine whether or not the provisions of this subchapter are being complied with.

('72 Code, § 506:35) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.39 FINAL INSPECTION AND APPROVAL.

Underground liquid storage tank(s) may be filled upon installation, however no contents may be drained or dispensed there from until its final inspection and approval by the Fire Chief. The permittee must request the final inspection and approval.

('72 Code, § 506:40) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.40 DETECTION OF LEAKS.

(A) The owner of each underground liquid storage system installed after January 1, 1994, must provide constant interstitial monitoring of each tank system for leak detection. Requirements for cathodic protection systems inspections and testing must comply as outlined in § 93.37(P).

(1) The owner must keep records of the sampling, testing, monitoring, within an area on site, or at a central location off site and available at reasonable times for inspection by the Fire Chief. Any such records must be maintained for at least ten years.

(2) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least ten years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained as long as the system is being used to comply with the requirements of this subchapter.

(3) All records created or maintained by the city pursuant to this or any other provision of this subchapter are public data unless

the subject of the data provides proof that its data is classified as private or non-public pursuant to M.S. Chapter 13. Such data, however, may be disclosed when relevant to enforce or cure a violation of the provisions of this subchapter.

(B) Interstice monitoring of double-wall tanks must be monitored in any one of the following methods, with monthly documentation:

(1) Hydrostatic tank monitoring is comprised of a solution in the interstitial space that is monitored by a liquid level sensor. This sensor takes into consideration the ambient temperature for normal expansion and contraction of the interstitial solution. A high level alarm would indicate a leak of the inner tank. A low level alarm would indicate a leak of the outer tank.

(2) Vapor sensor monitoring (dry interstitial space) is comprised of a sensor in the interstitial space that will detect either fuels or water. A fuel alarm would indicate a leak of the inner tank. A water alarm would indicate a leak of the outer tank.

(C) Pressure monitoring of dispensing lines in which submersible pumps are used must be installed to detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour, which in turn must slow the dispensing rate, interrupt electrical power to the pumps, and actuate both an audible and visual warning at the attendant station.

(D) An annual test of the operation of each leak detector must be conducted according to the manufacturer's requirements.

(E) Observation wells and/or monitoring sumps must not be allowed.

(F) Any apparent loss of any tank or product piping contents must be immediately reported to the Fire Chief and any other appropriate authority as required by law. A written notice of loss must be delivered to the Fire Chief and any other appropriate authority within 72 hours of the report.

('72 Code, § 506:45) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.41 GENERAL OPERATIONAL REQUIREMENTS.

(A) An underground liquid storage system installed after January 1, 1994 must not be used, kept, maintained, or operated if such use, keeping or maintaining or operation is the occasion of any nuisance or is dangerous to life or detrimental to health.

(1) Every tank owner, operator or land owner must give, and is deemed to have given, to any representative of the city permission:

(a) To enter upon such property at all reasonable times, to inspect any such property and tank and records required to be kept in conjunction therewith to ascertain whether there has been compliance with this subchapter;

(b) To enter upon such property for the purpose of correcting violations and conditions described in subdivisions (2) and (3) below and remaining unabated.

(2) If there is found to be any condition or violation of this subchapter that poses an imminent danger of loss of life or property or immediately jeopardizes the health, safety or welfare of the general public, the city may immediately enter upon the property for the purpose of abating the violation or condition pursuant to the provisions of subdivision (B)(2) below after attempting such notice as is reasonably calculated to reach one of the persons referred to in § 93.35(A).

(3) If the city finds there to be any nuisance, condition or violation of this subchapter under any other circumstances, the city must specify by written notice to one of the persons referred to in § 93.35(A) the corrections necessary to abate the violation or condition.

(a) The notified party must cause the abatement to be completed within ten days of the delivery or mailing of the notice.

(b) If the abatement is not completed within the ten-day period, the city may proceed to abate the nuisance pursuant to the provisions of subdivision (B)(2) below.

(B) Any underground liquid storage system installed after January 1, 1994, which, for 12 successive months commencing after January 1, 1993, remains empty, or for which inventory and testing records are not prepared, maintained, or available, or from which none of its contents are withdrawn for the purpose for which the contents are stored, or which remains unrepaired or unrestored, is deemed abandoned. Unless the owner or operator of the tank or owner of the property on which the tank is used to store fuel for use only when a usual source of fuel is interrupted and it can be shown that records required by this subchapter are prepared, maintained and available for the tank.

(1) Any such owner or operator of an abandoned underground liquid storage system must cause the portions of the underground

liquid storage system above ground to be dismantled and must further cause the tank to be completely drained, cleaned and removed to include the bottom hold down pad, all piping and the resulting trench filled with clean sand, which procedures must be witnessed by the Fire Chief. Tank sludge and tank must be properly disposed of.

(2) Failure to comply with the provisions of subdivision (1) above will result in removal of the nuisance pursuant to such procedures as the city deems appropriate, including but not limited to, the procedures set forth in § 94.01 et seq., and the International Fire Code. Costs of such efforts will be assessed against the property from which the nuisance is removed pursuant to Brooklyn Park ordinance.

(C) Any abandoned, damaged, defective, leaking, destroyed, unrepaired or unrestored underground liquid storage system is declared to be a nuisance.

(D) The cost of any inspection, testing, abatement or correction procedures prescribed by this subchapter is the responsibility of the owner and operator of the underground liquid storage system.

('72 Code, § 506:50) (Ord. 1993-742, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

UNDERGROUND LIQUID STORAGE SYSTEMS INSTALLED ON OR BEFORE JANUARY 1, 1994

§ 93.50 PURPOSE.

Wherever there is a conflict of requirements, the more restrictive governs so as to further the purpose of this subchapter in protecting the public's health, safety and welfare from the dangers of leakage of systems contents.

('72 Code, § 507:00) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.51 DEFINITIONS.

Terms defined in § 93.31 of this chapter have the same meanings ascribed to them in this subchapter.

('72 Code, § 507:01) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.52 VIOLATIONS.

After January 1, 1994, a person must not allow the use of an underground liquid storage system installed on or before January 1, 1994, to remain on one's property or on property under one's control, in violation of any of the provisions of this subchapter. It is a violation of this subchapter to permit, allow, aid, advise or cause a person to perform an act which is in violation of this subchapter or to fail to perform an act required by this subchapter.

(A) Each day that a violation of this subchapter continues constitutes a separate offense.

(B) An election by the city to criminally prosecute for violations of this subchapter does not prevent the city from proceeding with any other remedy available to the city for such a violation, and vice versa, and the city may pursue any and all available remedies simultaneously and while any other person, agency, or governmental subdivision is pursuing any remedy available as a result of the activity or violation.

(C) The Fire Chief or the Fire Chief's Designee may revoke a license that was issued to perform such work as required by this subchapter. The revocation is for 365 days from the date of the violation.

(('72 Code, § 507:05) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.53 EXCEPTION.

(A) The provisions of this subchapter do not apply to:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(3) Pipeline facilities, including gathering lines, regulated under the Natural Pipeline Safety Act of 1968, 49 USC, Chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 USC, Chapter 29;

(4) Surface impoundments, pits, ponds, or lagoons;

(5) Storm water or waste water collection systems;

(6) Flow-through process tanks;

(7) Tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor;

(8) Septic tanks;

(9) Tanks used for storing liquids that are gaseous at atmospheric temperature and pressure; or

(10) Tanks used for storing agricultural chemicals regulated under chapter 18B, 18C, or 18D.

(B) The terms of § 93.54(A)(1) through (A)(7), (A)(9) through (A)(10), (B) and (C); § 93.57(G), and §§ 93.58 through 93.64 apply to all tanks in subdivisions (A)(1), (A)(2), and (A)(9) of this section.

(C) Heating oil underground storage tank deferrals. Underground storage tank system(s) over 1,100 gallons capacity used exclusively for storing heating oil for consumptive use on the premises where stored are deferred except for notification of new tanks, changes in service or tank seller information as stated in Minn. Rule Chapter 7103.0120, subparts 2 and 6.

('72 Code, § 507:10) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.54 REGISTRATION.

(A) Within six months after January 1, 1994 the owner of each underground storage system located in the city, and the owner of each parcel of property in the city on which such a system is located, must notify the Fire Chief of the following information and any further information the Fire Chief may require:

(1) The address and legal description of the property on which the underground liquid storage system is located;

(2) The name and address of each owner of the property;

(3) The name and address of each owner of the underground liquid storage system;

(4) The name and address of the operator who will be responsible for the maintenance and upkeep of the underground storage system(s) and who is legally constituted and empowered to receive service of notice of violation of the provisions of city ordinances, to receive orders, to institute remedial action to affect such orders, to accept all service of process pursuant to law and to be available to be contacted by the city in the case of an emergency. The Fire Chief must be notified immediately in writing of any change of required operator information;

(5) The actual or anticipated contents of the underground liquid storage tank(s) and the material of which each tank is constructed;

(6) The name and address of the registrant and the registrant's relationship to all owners of the underground liquid storage system(s);

(7) The location of any records required to be maintained pursuant to this subchapter;

(8) The resin composition used in the manufacture of the fiberglass tank, if fiberglass, together with a listing of compatible product types. For each tank made of steel the registrant must provide the design standards effective at the time the tank was installed;

(9) A map or drawing of the property on which each tank is located identifying the dimensions of each tank, the location of each tank on the property, and the capacity of each tank;

(10) The date of the installation of each underground liquid storage tank.

(B) A copy of current information supplied to the State of Minnesota pursuant to M.S. § 116.48, may be substituted for the registration required in division (A) above, although the city may require additional information. If any of the information contained in the registration required by division (A) above changes the registrant, or the registrant's successor if the registrant is no longer a party obligated to register pursuant to division (A) above, must immediately notify the Fire Chief of any such change.

(C) Within 72 hours of the Fire Chief's inquiry concerning the ownership or control of any such underground liquid storage system and the land on which it is located, every person contacted must respond in writing to the Fire Chief. The response must include the name and address of any and all persons succeeding the registrant to the ownership or control of the properties or activities.

('72 Code, § 507:15) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.55 CONFORMANCE DEADLINES.

(A) Except as otherwise required in division (C) below, all existing underground liquid storage systems must comply with the same requirements of secondary containment, corrosion protection and overfill/overspill protection that are specified for systems governed by §§ 93.30 through 93.41, or employ methods or technologies deemed by the city to be as good as or better than said requirements, no later than December 22, 1998.

(B) All existing underground liquid storage systems must comply with the same requirements of leak detection that are specified for systems governed by §§ 93.30 through 93.41, or employ methods or technologies deemed by the city to be as good as or better than said requirements, no later than December 31, 1993.

(C) (1) If the date of installation of any such system is not known to the city's satisfaction, the deadline for meeting said requirements is two years from January 1, 1994.

(2) Exception: Underground liquid storage systems containing waste oil need comply only with secondary containment, corrosion protection, spill protection and leak detection as outlined in 93.57(H).

('72 Code, § 507:20) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.56 UPGRADING OF EXISTING UNDERGROUND LIQUID STORAGE SYSTEMS.

(A) *Alternatives.* Alternatives allowed for all existing underground liquid storage systems must comply with one of the following requirements:

(1) Must comply with the same requirements of secondary containment, corrosion protection, overfill/overspill protection and leak detection that are specified for systems governed by §§ 93.30 through 93.41;

(2) The upgrading requirements in divisions (B) through (D) of this section, and § 93.57; or

(3) Abandonment and status of underground liquid storage systems requirements in § 93.59(B) of this chapter.

(B) *Tank upgrading requirements.* Steel tanks must be upgraded by both internal lining and cathodic protection in accordance with Bulletin 1631 of the American Petroleum Institute, Interior Lining of Underground Storage Tanks, and the National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems. Fiberglass-reinforced plastic tanks must be upgraded by internal lining of the tank in accordance with Bulletin 1631 of the American Petroleum Institute, Interior Lining of Underground Storage Tanks, and the tank manufacturer's recommendations.

(1) The tank must be internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the interior lining. If there are corrosion holes or the tank is not structurally sound, the tank must be removed from the ground.

(2) (a) Within ten years after lining, and every five years after that, the lined tank must be internally inspected and found to be structurally sound with the lining still performing according to original design specifications, or the tank must be removed from the ground.

(b) Exception: The provisions of this division, internal lining of tanks, do not apply to tanks less than 20 years old as calculated from the date of installation, or the manufacturer's warranty specifications for the life expectancy of the tank. Any such tank for which the installation date cannot be shown to the satisfaction of the Fire Chief, is presumed to be more than 20 years old.

(3) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of the part of the tank that is in contact with the ground.

(4) All underground liquid storage tanks equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester according the following requirements:

(a) All cathodic protection systems must be tested within six months of installation and at least every three years after that.

(b) The criteria that are used to determine that cathodic protection is adequate as required by this subchapter is according to the code of practice in National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.

(5) All underground liquid storage tanks equipped with impressed current cathodic protection systems must be inspected every 60 days to ensure the equipment is operating properly.

(C) *Piping upgrading requirements.*

(1) All piping and venting capable of being corroded and connected to and associated with an underground liquid storage tank must be protected from corrosion in the same manner, as nearly as possible, as the tank itself.

(2) All metal piping must be isolated from the tank(s) so as to prevent the corrosion of one affecting the other.

(3) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of the part of the piping that is in contact with the ground.

(4) All product piping equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester according the following requirements:

(a) All cathodic protection systems must be tested within six months of installation and at least every three years after that.

(b) The criteria that are used to determine that cathodic protection is adequate as required by this subchapter must be according to the code of practice in National Association of Corrosion Engineers RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.

(5) All product piping equipped with impressed current cathodic protection systems must be inspected every 60 days to ensure the equipment is operating properly.

(D) *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the underground liquid storage system, all existing underground liquid storage systems must comply with new underground liquid storage system spill and over fill prevention equipment requirements.

(1) (a) Overfill protection must be provided including, but not limited to, the installation of equipment that will automatically shut off flow into the tank when the tank is no more than 95% full; or by alerting the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.

(b) Exception: Overfill protection does not apply to underground waste oil systems.

(2) Spill protection must be provided including, but not limited to, the installation of equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe, such as a spill catchment basin.

('72 Code, § 507:25) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.57 DETECTION OF LEAKS.

(A) The owner or operator of each underground liquid storage system governed by this subchapter must cause the contents of each tank to be constantly monitored by automatic tank gauging and inventory control systems.

(1) The owner must keep records of the sampling, testing, monitoring, within an area on site or at a central location off-site and available at reasonable times for inspection by the Fire Chief. Any such records must be maintained for at least ten years.

(2) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least ten years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained as long as the system is being used to comply with the requirements of this subchapter.

(3) All records created or maintained by the city pursuant to this or any other provision of this subchapter must be public data unless the subject of the data provides proof that its data is classified as private or non-public pursuant to M.S. Chapter 13. Such data, however, may be disclosed when relevant to enforce or cure a violation of the provisions of this subchapter.

(B) *Observation wells*. All existing observation wells must be provided with continuous monitoring for hydrocarbons that can detect the presence of at least one-eighth of an inch of free product on top of the ground water. Observation wells must be clearly marked and secured to avoid unauthorized access and tampering.

(C) *Monitoring sumps*. All existing monitoring sumps must be provided with continuous monitoring of hydrocarbon vapors that will not be rendered inoperative by the groundwater, rainfall, of soil moisture or other known interferences so that a release could go undetected. The vapor monitoring system must be designed to accommodate the background contamination yet detect any significant increase in concentration above background. Monitoring sumps must be clearly marked and secured to avoid unauthorized access and tampering.

(D) Pressure monitoring of dispensing lines in which submersible pumps are used must be installed to detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour, which in turn must slow the dispensing rate, interrupt electrical power to the pumps, and actuate both an audible and visual warning at the attendant station.

(E) An annual test of the operation of each leak detector must be conducted according to the manufacturer's requirements.

(F) Automatic tank gauging that tests for the loss of product and conducts inventory control is required.

(1) The automatic product level monitoring equipment must be able to detect a 0.2 gallon per hour leak rate.

(2) The product inventory control must be conducted monthly to detect a release of at least 1.0% flow-through plus 130 gallons on a monthly basis:

(a) The inventory volume measurements for product inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(b) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(c) The product inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(d) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(e) The product dispensing is metered and recorded within the Minnesota Department of Public Service, Division of Weights and Measures, standards for meter calibration; and

(f) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(3) The practices described in the American Petroleum Institute 1621, Recommended Practice for Bulk Liquid Stock Control at Retail Outlets, may be used, where applicable, as guidance in meeting the requirements of this subdivision.

(G) Any apparent loss of any tank or product piping contents registered or required to be registered with the city pursuant to § 93.54 must be immediately reported to the Fire Chief and any other appropriate authority as required by law. A written notice of such loss must be delivered to the Fire Chief within 72 hours of the report.

(H) At least once every five years, the owner or operator of each underground liquid storage system installed on or before January 1, 1994, or the owner of land on which such a system is located, must cause the same to be subjected to a testing procedure, by a qualified tester, approved by the Fire Chief and designed to assess the tightness of the tank and product piping. One such test must be performed on each tank and product piping more than five years old, as measured from the date of installation, at some time during the months of April, May, or June, and every five years thereafter. Any such tank for which the installation date cannot be shown to the satisfaction of the Fire Chief is presumed to be more than five years old by April 1994.

(1) Such owner or occupant must cause the results of every such test to be filed in writing, with the Fire Chief within 20 days of the test. The Fire Chief may, for good cause shown, extend said deadline up to an additional 20 days total.

(2) Whenever performed, every such test must be performed by a person who is licensed under § 93.62 and who demonstrates to the satisfaction of the Fire Chief knowledge in the testing of liquid storage tanks, piping and equipment.

(3) Exception #1: The provisions of this division do not apply to double-wall tanks installed on or before January 1, 1994, that are provided with interstice monitoring as described in § 93.40(B).

(4) Exception #2: The provisions of this division do not apply to double-wall piping installed on or before January 1, 1994, that are provided with pressure monitoring of dispensing lines as described in § 93.40(C).

('72 Code, § 507:30) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.58 INSPECTIONS.

(A) The use, repair, alteration or removal of any underground liquid storage system governed by this subchapter must be inspected by the Fire Chief pursuant to such schedules as is deemed appropriate or as designated in the codes, statutes, ordinances and rules governing such activity.

(B) No permit required by this subchapter will be issued unless the permittee agrees in an application to permit inspections.

(C) The city has authority to inspect activities authorized by the permit at any reasonable time during the use, repair or alteration of an underground liquid storage system and thereafter to determine whether or not the provisions of this subchapter are being complied with.

('72 Code, § 507:35) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.59 GENERAL OPERATIONAL REQUIREMENTS.

(A) An underground liquid storage system governed by this subchapter must not be used, kept, maintained, or operated if such use, keeping or maintaining or operation is the occasion of any nuisance or is dangerous or detrimental to life or health.

(1) Every tank owner, operator or land owner must give, and is deemed to have given, to any representative of the city permission:

(a) To enter upon property at all reasonable times and to inspect any such property and/or tank and records required to be kept in conjunction therewith, to ascertain whether there has been compliance with this subchapter.

(b) To enter upon property for the purpose of correcting violations and conditions described in subdivisions (2) and (3) below and remaining unabated.

(2) If there is found to be any nuisance, condition or violation of this subchapter that the city determines to pose an imminent danger of loss of life or property or immediately jeopardizes the health, safety or welfare of the general public, the city may immediately enter upon the property for the purpose of abating the violation or condition pursuant to the provisions of subdivision (B)(2) below after attempting such notice as is reasonably calculated to reach one of the persons referred to in § 93.54(A).

(3) If the city finds there to be any nuisance, condition or violation of this subchapter under any other circumstances, the city must specify by written notice to one of the persons referred to in § 93.54(A), the corrections necessary to abate the violation or condition.

(a) The notified party must cause the abatement to be completed within ten days of the delivery or mailing of the notice.

(b) If the abatement is not completed within the ten-day period, the city may proceed to abate the nuisance pursuant to the provisions of subdivision (B)(2) below.

(B) Any underground liquid storage system installed on or before January 1, 1994, which, for 12 successive months commencing after January 1, 1993, remains empty, or for which inventory and testing records are not prepared, maintained, or available, or from which none of its contents are withdrawn for the purpose for which the contents are stored, or which remains unrepaired or unrestored, is deemed abandoned. Unless the owner or operator of the tank or owner of the property on which the tank is used to store fuel for use only when a usual source of fuel is interrupted and it can be shown that records required by this subchapter are prepared, maintained and available for the tank.

(1) Any such owner or operator of an abandoned underground liquid storage system must cause the portions of the underground liquid storage system above ground to be dismantled and must further cause the tank to be completely drained, cleaned and removed to include the bottom hold down pad, all piping and the resulting trench filled with clean sand, which procedures must be witnessed by the

Fire Chief. Tank sludge and tank must be properly disposed of.

(2) Failure to comply with the provisions of subdivision (1) above results in removal of the nuisance pursuant to such procedures as the city deems appropriate, including but not limited to, the procedures set forth in § 94.01 et seq., and the International Fire Code. Costs of such efforts are assessed against the property from which the nuisance is removed pursuant to Brooklyn Park ordinance.

(C) Any abandoned, damaged, defective, leaking, destroyed, unrepaired or unrestored underground liquid storage system installed is declared to be a nuisance.

(D) The cost of any inspection, testing, abatement or correction procedures prescribed by this subchapter is the responsibility of the owner and operator of the underground liquid storage system.

('72 Code, § 507:40) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.60 ALTERATION, REPAIR OR REMOVAL PERMITS.

(A) The alteration, repair or removal of any underground liquid storage system governed by this subchapter requires permits issued pursuant to the provisions of the International Fire Code and any other applicable code, ordinance, statute or rule.

(B) The provisions of § 93.34 of this code apply to permits issued pursuant to this section.

(C) The Fire Chief may deny a permit to persons not capable of performing pursuant to ordinance requirements.

('72 Code, § 507:45) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.61 PERMITS; GENERAL PROVISIONS.

(A) The application for any permit required by this subchapter must contain as a minimum any information not already provided pursuant to § 93.54(A).

(B) If any of the information contained in the application required by division (A) above changes before the granting or expiration of the permit, the applicant or permittee, as the case may be, must notify the Fire Chief of any such change. Every permittee must respond in writing to the Fire Chief within 72 hours of the Chief's inquiry concerning the ownership or control of any underground liquid storage system, the land on which it is located, or the activity for which the permit was granted.

('72 Code, § 507:50) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.62 QUALIFICATIONS FOR LICENSEE.

(A) The Fire Chief may investigate applicants and applications for all licenses required by this subchapter.

(B) The Fire Chief may deny any application for license required by this subchapter for just cause.

(C) It is unlawful for a person, firm, or corporation, including subcontractors, to engage in the business of maintaining, altering, repairing or removing any underground liquid storage system without first having procured a license therefore as herein provided.

(D) Licenses are issued only to contractors who have been approved by the Minnesota Pollution Control Agency as a certified contractor, pursuant to M.S. § 116.491 Subd. (1), to enable them to install, maintain, alter, repair or remove underground liquid storage systems.

(E) Applications for licenses must be made to the Licensing Division and such license will be granted upon proof of the applicant's qualifications therefor and upon filing a bond in the amount of $2,000 and the Fire Chief's approval conditioned upon compliance with the provisions of this subchapter.

(F) The provisions of § 110.37 of this code apply to licenses issued pursuant to this section.

('72 Code, § 507:55) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03)

§ 93.63 ALTERATION, REPAIR, OR REMOVAL REQUIREMENTS.

(A) For any alteration, repair or removal of an underground liquid storage system, two sets of plans and specifications and pertinent explanatory data including, but not limited to, health and safety features must be submitted to the Fire Chief for approval relative to design, operation, maintenance, repair, alteration, or removal of any underground liquid storage system. Such plans must show, in addition to any other information deemed appropriate by the city, the following in a scale of not smaller than one inch to equal 20 feet (unless a smaller scale is approved by the Fire Chief under particular circumstances of the case):

(1) A layout of the lot on which the underground liquid storage tank is located showing the location of each system requiring a permit, so as to assist the city in determining the potential hazards involved in the proposed work. If the information is not already available to the city, the Fire Chief may also require a layout of the entire lot on which the underground liquid storage system is located together with adjacent properties, distances from the lot lines to the underground liquid storage system, the location of other features which may be affected by the underground liquid storage system including, but not limited to, features that could be contaminated within 50 feet of the system, other such underground liquid storage systems on said lot, buildings, water supply systems, buried sewers and sewage systems, utilities or wells.

(2) All dimensions and capacities of the underground liquid storage tank(s).

(3) The type of tank and pipe material, overfill, overspill, and leak detection.

(B) Alterations, repairs, or removals must be conducted in conformity with the approved plans. Deviations from the plans must be approved by the Fire Chief before being done and after the filing of a supplementary plan covering that portion of the work involved and conforming to the provisions of this subchapter.

(C) Alterations or repairs must be such that the systems will function in a sound manner and will not create a nuisance nor endanger the safety of any water supply or utility or create any other health hazard. Consideration will be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, depth to groundwater, geology, proximity to existing or future water supplies and other utilities, accessibility for maintenance and possible expansion.

(D) Contents of an underground liquid storage system must not be discharged to the ground surface, abandoned wells or bodies of surface water, or into any rock formation, or into any well or any other excavation in the ground.

('72 Code, § 507:60) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.64 APPROVALS.

Contents must not be drained or dispensed from a repaired or altered system until after its final inspection and approval by the Fire Chief. The permittee must request the final inspection and approval.

('72 Code, § 507:65) (Ord. 1993-743, passed 11-22-93; Am. Ord. 2003-1010, passed 12-1-03) Penalty, see § 10.99

§ 93.99 PENALTY.

(A) Any person who shall violate any provisions of the chapter hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the Council or by a court of competent jurisdiction within the time fixed herein, shall severally for each and every violation and noncompliance respectively, be guilty of a penal offense and punished according to § 10.99 of this code. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified each ten days that prohibited conditions are maintained shall constitute a separate offense.

(B) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

('72 Code, § 225:100) (Ord. 1976-218(A), passed 2-9-76; Am. Ord. 1995-784, passed 7-10-95)

Section

Nuisances

Cross-reference:

Nuisances regarding excavations and earth moving, see §§ 118.01 et seq.

NUISANCES

§ 94.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ABANDONED PROPERTY. In the form of deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, and left unprotected from the elements; the term includes, but is not limited to, deteriorated, wrecked, inoperable, or partially dismantled motor vehicles, trailers, plumbing fixtures, and furniture.

CHILD. Any person less than 18 years of age.

CHEMICAL DUMPSITE. Any place or area where chemicals or other waste materials have been located.

CLANDESTINE DRUG LAB. The unlawful manufacture or attempt to manufacture controlled substances.

CLANDESTINE DRUG LAB SITE. Any place or area where an unlawful clandestine drug lab exists. A ***CLANDESTINE DRUG LAB SITE*** includes any dwellings, accessory structures, a chemical dump site, a vehicle boat trailer or other similar appliance or any other area or location.

CONTROLLED SUBSTANCE. Any drug, substance or immediate precursor in Schedules I through V of M.S. § 152.02. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

GARBAGE. All putrescible animal, vegetable, or other matter that attends the preparation, consumption, display, dealing in or storage of meat, fish, fowl, birds, fruit, or vegetables, including the cans, containers, or wrappers wasted along with such materials.

HAZARDOUS WASTE. Any refuse, sludge, or waste material or combinations of refuse, sludge or other waste materials in solid, semi-solid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. ***HAZARDOUS WASTE*** does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

LITTER. Any garbage, refuse, abandoned property, and hazardous waste and additionally includes the meaning given by M.S. § 609.68.

METHAMPHETAMINE PRECURSOR DRUGS. Any:

(1) Drug or product containing as its sole active ingredient ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts or optical isomers; or

(2) Combination drug or product containing as one of its active ingredients ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or sales of optical isomers.

OVER-THE-COUNTER SALES. A retail sale of a drug or product, but not including the sale of a drug or product pursuant to the terms of a valid prescription.

OWNER. Any person, firm, corporation, or other entity who owns, in whole or in part, the land, building, structure, vehicle, boat, trailer or other location associated with a clandestine drug lab site or chemical dump site.

REFUSE. All solid waste products or those wastes having the character of solids rather than liquids in that they will not flow readily without additional liquid and which are composed wholly or partly of such materials as garbage, sweepings, swill, cleanings, trash, rubbish, industrial solid wastes or domestic solid wastes; organic wastes or residue of animals sold as meat, fruit, or other vegetable or animal matter from kitchen, dining room, market, food establishment or any place dealing or handling meat, fowl, fruit, grain or vegetables; offal, animal excreta, or the carcass of animals; tree or shrub trimmings, or grass clippings; brick, plaster, wood, metal or other waste matter resulting from the demolition, alteration or construction of buildings or structures; accumulated waste materials, cans, containers, junk vehicles, ashes, tires, junk, or other such substances which may become a nuisance.

UNDERGROUND LIQUID STORAGE SYSTEM, UNDERGROUND STORAGE TANK or ***TANK.*** Any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of liquid substances deemed by the city to pose a threat to the public's health, safety or welfare. The volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground, this does not include septic tanks.

('72 Code, § 1000:01) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1993-741, passed 11-22-93; Am. Ord. 2005-1030, passed 1-10-05)

§ 94.02 PUBLIC NUISANCE PROHIBITED.

Whoever, by act or failure to perform a legal duty, intentionally does any of the following is guilty of maintaining a public nuisance, and is punishable as set forth herein:

(A) Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any number of members of the public; or

(B) Interferes with, obstructs, or renders dangerous for passage, public streets, highway or right of way, or waters used by the public; or

(C) Is guilty of any other act or omission declared by statutory law, the common law, or this subchapter to be a public nuisance, whether or not any sentence is specifically provided therefor; or

(D) Permits real property under the person's control to be used to maintain a public nuisance or rents the same, knowing it will be

so used.

('72 Code, § 1000:06) (Ord. 1989-627(A), passed 6-26-89) Penalty, see § 94.99

§ 94.03 SPECIFIC PUBLIC NUISANCES PROHIBITED.

It is declared to be a public nuisance to permit, maintain, or harbor any of the following:

(A) Diseased animals, fish, or fowl, wild or domestic, whether confined or running at large.

(B) Carcasses of animals, fish, or fowl, wild or domestic, not buried at least three feet under the surface of the ground or destroyed within 24 hours after death.

(C) Garbage not stored in rodent free or fly-tight containers, or garbage stored so as to emit foul and disagreeable odors, or garbage stored so as to constitute a hazard to public health.

(D) Accumulations of refuse, garbage, litter, abandoned property or hazardous waste as defined herein.

(E) The dumping of any effluent, garbage, refuse, wastewater, or other noxious substance upon public or private property.

(F) Any open well, pit, excavation, structure, barrier or other obstruction which endangers public health, safety, or welfare.

(G) The pollution of any public or private well or cistern, any public stream, lake, canal, or body of water by effluent, garbage, rubbish, or other noxious substance.

(H) Any noxious weeds, or any other vegetation which endangers public health, safety, or welfare, or which is contraband within the meaning of state or federal laws.

(I) The emitting or production of dense smoke, foul odor, noise, noxious fumes, gases, soot, cinders, or sparks in quantities which unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any number of members of the public.

(J) The public exposure of persons having a contagious disease or condition which endangers public health, safety, or welfare.

(K) Accumulation of junk, disused furniture, appliances, machinery, automobiles or parts thereof, or any matter which may become a harborage for rats, snakes, or vermin or which creates a visual blight, or which may be conducive to fire, or which endangers the comfort, repose, health, safety, or welfare of the public.

(L) It is unlawful to cause, permit, or maintain any abandoned cesspool or septic tank without its being properly filled.

(M) Any abandoned, damages, defective, leaking, destroyed, unrepaired or unrestored underground liquid storage system.

('72 Code, § 1000:11) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1993-741, passed 11-22-93) Penalty, see § 94.99

§ 94.04 LIMITATIONS ON KEEPING OF ANIMALS.

It is hereby declared to be a public nuisance to permit, maintain, or harbor any of the following:

(A) More than three animals, as defined by § 92.01 of this code, over six months old, except in a commercial kennel.

(B) Chickens and other domestic fowl.

(C) Any combination of animals and/or fowl of any age kept in such numbers or under conditions which reasonably annoy, injure, or endanger the health, safety, comfort, repose, or welfare of the public or of the animals or fowl.

(D) Any wild animal, including crossbreeds with wild animals, which in their wild state pose a threat to humans or domestic animals or are capable of transmitting rabies, including, but not limited to, wolves, bear, cougar, skunk, lynx, bobcat and fox.

(E) Any animal prohibited by Chapter 92 of this code.

('72 Code, § 1000:16) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1997-861, passed 10-27-97; Am. Ord. 2012-1149, passed 9-4-12) Penalty, see § 94.99

§ 94.05 LITTER PROHIBITED.

It is unlawful to throw, deposit or store litter on private or public property within the city.

(A) *Duties of owners and occupants.* The owner, lessee, or occupant of private property, whether occupied or vacant, must maintain the property free of litter.

(B) *Authorized storage.* Nothing in this section prohibits the storage of litter on private property in receptacles or containers which meet the requirements of the city code.

(C) *Removal of litter; procedure; collection of costs.*

(1) *Notice; service.* When there exists litter on private property, a notice to remove the litter will be served upon the owner, lessee or occupant thereof by the Health Authority. The notice must be served by certified mail, or by personal delivery. When the property is occupied, service upon the occupant is deemed service upon the owner; where the property is unoccupied or abandoned, service must be by mail to the last known owner of record of the property.

(2) *Notice; contents.* The notice required by subdivision (1) must state:

(a) The nature and location of the litter;

(b) That the litter must be removed or properly stored within ten days of service of the notice; and

(c) That if the litter is not so removed or stored, it will be removed by the city and the cost of such removal assessed against the property.

(3) *Costs.* The Health Authority must keep a record of all costs incurred by the city in the removal and disposition of litter pursuant to this section, including all administrative costs involved in the service of the notice required by this section, and must report to the City Clerk annually not later than August 1.

(4) *Assessment.* On or before September 1 of each year, the Clerk must list the total costs incurred by the city under this section against each separate lot or parcel to which they are attributable. The City Council must then spread the costs against each property as a special assessment for collection as other special assessments in the following year, all as authorized by M.S. Chapter 429.

('72 Code, § 1000:21) (Ord. 1989-627(A), passed 6-26-89) Penalty, see § 94.99

§ 94.06 ABATEMENT OF NUISANCE AND ASSESSMENT OF COST.

(A) When any nuisance is found to exist, the Health Authority of the city must order the owner or occupant thereof to remove the same, at the expense of the owner or occupant, within a period not to exceed ten days, the exact time to be specified in the notice. Upon failure of the owner or occupant to abate the nuisance, the City Manager or designee must cause the nuisance to be abated and must certify the cost thereof to the Finance Department, and the Finance Department must certify the costs to the County Auditor to be extended on the tax roll of the county against the real estate from which the nuisance has been abated, all in accordance with M.S. §§ 145A. It is unlawful to obstruct any official of the City of Brooklyn Park in enforcing this chapter.

(B) In the event the Health Authority of the city deems a nuisance situation to constitute an immediate public health hazard, the Health Authority may immediately abate or condemn the nuisance.

(C) The owner or occupant must then make safe or secure the property or nuisance in accordance with the above provisions.

('72 Code, § 1000:26) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1989-640(A), passed 12-18-89)

§ 94.07 SERVICE CHARGES AND SPECIAL ASSESSMENTS AGAINST BENEFITTED PROPERTIES.

(A) The city is authorized by M.S. § 429.101 to provide for the collection of unpaid special charges for all or any part of the cost of snow, ice or rubbish removal from sidewalks or public ways; weed elimination from streets or private property; removal or elimination of public health or safety hazards from private property; installation or repair of water service lines; street sprinkling or other dust treatment of streets; the trimming and care of trees and the removal of unsound trees from any street or public way; the treatment and removal of insect infested or diseased trees on private property; the repair of sidewalks and alleys; or the operation of a street lighting system; as a special assessment against the property benefitted.

(B) The city provides that all of the foregoing services may be special assessed against benefitted properties which require these services. The City Manager must provide the property owner or owners as shown on city tax records with a written notice to correct the problems addressed in division (A) of this section. The City Manager may also provide in the written notice that the primary responsibility for correction of the problem is upon the property owner or occupant to do the work correcting the problem within a specific time. This provision applies in all cases except street sprinkling or other dust treatment, alley repair, tree trimming, care and removal or the operation of a street lighting system. If the property owner does not correct the problem or remove or eliminate the public health or safety hazard the notice must state that the city will do the work and attempt to collect the costs from the property owner or other person served for the charges and if the costs are not paid the unpaid charges must be specially assessed pursuant to the provisions of M.S. § 429:101.

(C) All the provisions of M.S. § 429.101 are incorporated by reference.

('72 Code, § 1000:60)

§ 94.08 PURPOSE AND INTENT.

The purpose of §§ 94.08 through 94.15 of this chapter is to protect the public health, safety and welfare and to reduce public exposure to health risks where law enforcement officers have determined that hazardous chemicals from a suspected clandestine drug lab or chemical dump site may exist. The City Council finds that such sites may contain hazardous chemicals, substances, or residues that place people, particularly children or adults of child-bearing age, at risk of exposure through inhabiting or visiting the site or using or being exposed to contaminated personal property.

(Ord. 2005-1030, passed 1-10-05)

§ 94.09 DECLARATION OF PROPERTY AS A PUBLIC NUISANCE.

(A) Any property containing a clandestine drug lab or chemical dump site will be declared a public health nuisance.

(B) No person may occupy, enter or allow occupancy or entrance to property declared a public health nuisance under this section until such declaration is vacated or modified to allow occupancy.

(Ord. 2005-1030, passed 1-10-05) Penalty, see § 94.99

§ 94.10 LAW ENFORCEMENT NOTICE TO OTHER AUTHORITIES.

Upon identification of a clandestine drug lab site or chemical dumpsite deemed to place neighbors, visiting public, or present and future occupants of the affected property at risk for exposure to harmful contaminants and other associated conditions, law enforcement officials will notify the City Health Official and other appropriate municipal, child protection, and public health authorities of the property location, property owner if known, and conditions found.

(Ord. 2005-1030, passed 1-10-05)

§ 94.11 SEIZURE OF PROPERTY.

(A) If a clandestine drug lab or chemical dump site is located inside a vehicle, boat, trailer, or other form of moveable personal property, law enforcement authorities may immediately seize such property and transport it to a more secure location.

(B) Personal property may not be removed from a clandestine drug lab site or a chemical dump site without the prior consent from the City Health Official.

(Ord. 2005-1030, passed 1-10-05)

§ 94.12 ACTION BY CITY HEALTH OFFICIAL.

(A) Upon notification by law enforcement authorities, the City Health Official or other appropriate municipal or public health

authority will issue a Declaration of Public Health Nuisance for the affected property and post a copy of the Declaration at all probable entrances to the dwelling or property.

(B) Removal of the posted Declaration of Public Health Nuisance by anyone other than the City Health Official, law enforcement authorities, or their designees, is prohibited.

(C) The City Health Official will also attempt to notify the following parties of the Declaration of Public Health Nuisance:

(1) Owner of the property;

(2) Occupants of the property;

(3) Neighbors at probable risk;

(4) The City of Brooklyn Park Police Department;

(5) Other state and local authorities, such as the Minnesota Pollution Control Agency and the Minnesota Department of Public Health, which are known to have public and environmental protection responsibilities applicable to the situation.

(D) Any rental license issued by the city for the property is immediately suspended upon issuance of the Declaration of Public Health Nuisance. Such license will be reinstated only after full compliance with an abatement order.

(E) After issuance of the Declaration of Public Health Nuisance, the City Health Official will issue an order to the property owner to abate the public health nuisance. The abatement order will include the following:

(1) A copy of the Declaration of Public Health Nuisance;

(2) An order to immediately vacate those portions of the property, including building or structure interiors, which may place the occupants or visitors at risk;

(3) Notification of suspension of the rental license, if applicable; and

(4) A summary of the owner's and occupant's responsibilities.

(Ord. 2005-1030, passed 1-10-05)

§ 94.13 RESPONSIBILITIES OF OWNER.

(A) Within ten days after the abatement order is mailed to the owner, the property owner must, at the owner's expense:

(1) Properly secure and post the perimeter of any contaminated areas on the property in an effort to avoid exposure to unsuspecting parties;

(2) Promptly contract with appropriate environmental testing and cleaning firms to conduct on-site assessment, complete cleanup and remediation testing, including periodic follow-up testing to assure that the health risks are sufficiently reduced to allow safe human occupancy of the property and structures located on the property;

(3) Regularly notify the city of actions taken and reach agreement with the city on the cleanup schedule; and

(4) Provide written documentation to the city of the cleanup process, including a signed, written statement that the property is safe for human occupancy and that the cleanup was conducted in accordance with Minnesota Department of Health guidelines.

(B) The property may not be reoccupied or used in any manner until the city has obtained the written statement in division (A)(4) and has confirmed that the property has been cleaned in accordance with the guidelines established by the Minnesota Department of Health.

(Ord. 2005-1030, passed 1-10-05) Penalty, see § 94.99

§ 94.14 OWNER'S RESPONSIBILITY FOR COSTS.

The owner is responsible for all costs associated with nuisance abatement and cleanup of the clandestine drug lab site or chemical dump site, including, but not limited to, costs for:

(A) Emergency response;

(B) Posting and physical security of the site;

(C) Notification of affected parties;

(D) Expenses related to the recovery of costs, including the assessment process;

(E) Laboratory fees;

(F) Cleanup services;

(G) Administrative fees: and

(H) Other associated costs.

(Ord. 2005-1030, passed 1-10-05) Penalty, see § 94.99

§ 94.15 CITY AUTHORITY TO INITIATE CLEANUP AND RECOVERY OF COSTS.

(A) If, after issuance of the Declaration of Public Health Nuisance and the abatement order, the city is unable to locate the property owner or the property owner fails to arrange appropriate assessment and cleanup, the City Health Official is authorized to initiate the on-site assessment and cleanup.

(B) The city may initiate on-site assessment and cleanup before the expiration of the ten-day period in § 94.13(A) if the Health Authority deems the situation to be an immediate public health hazard.

(C) The city may abate the nuisance by removing any hazardous structure, building, or otherwise, in accordance with M.S. Chapter 463.

(D) If the city abates the public health nuisance, it may recover all costs associated with such abatement. In addition to any other legal remedy, the city may recover costs by civil action against the person or persons who own the property or by assessing such costs as a special tax against the property in the manner that taxes and special assessments are certified and collected pursuant to M.S. § 429.101 and §§ 94.06 and 94.07 of this chapter.

(E) Nothing in this chapter is intended to limit the owner's, occupant's or the city's right to pursue an action authorized by law to recover costs incurred from the persons contributing to or operating a clandestine drug lab or from any other lawful source.

(Ord. 2005-1030, passed 1-10-05)

§ 94.99 PENALTY.

(A) Any person violating any of the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and subject to a fine of not more than $1,000 and by imprisonment for a period of not exceeding 90 days or both, together with the costs of prosecution. Each day that violation exists shall constitute a separate offense.

(B) Each day that a prohibited act shall continue, or such nuisance shall be maintained, shall constitute a separate offense.

('72 Code, § 1000:31) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 2005-1030, passed 1-10-05)

CHAPTER 95: PARK REGULATIONS

Section

Cross-reference:

Recreation and Park Department, see §§ 31.01 et seq.

Parks and Recreation Advisory Commission, see §§ 31.45 et seq.

§ 95.01 PURPOSE; DEFINITIONS.

(A) *Purpose*. The city deems it appropriate, reasonable and necessary to provide an ordinance specifying rules and regulations in order to provide for the recreational enjoyment of park areas and facilities; for the protection and preservation of park property, facilities and natural resources of the city; and for the safety and general welfare of the public.

(B) *Definitions.*

AMUSEMENT CONTRAPTIONS. Any contrivance, device, gadget, machine or structure designed to test the skill or strength of the user or to provide the user with any sort of ride, lift, swing or fall experience including, but not limited to, ball-throwing contest device, pinball type devices, animal ride devices, dunk tank, ball and hammer device, trampoline devices and the like.

AREA or ***AREAS.*** A specified place within a park.

CITY. The City of Brooklyn Park, established pursuant to Minnesota Statutes.

COUNCIL. Mayor and City Council of Brooklyn Park.

DIRECTOR. Either the Director of Recreation and Parks or the Director of Operations and Maintenance.

EMPLOYEE. Any city volunteer or full or part-time regular or temporary worker hired by the city.

HIKING. Traveling on foot, i.e., walking, running or with an assistive mobility device.

LASER. Any device, which emits a coherent, monochromatic beam of light.

MOTOR VEHICLE. Every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway except devices moved by human power or used exclusively upon stationary rails or tracks.

MOTORIZED RECREATION VEHICLE. Any self-propelled, off-the-road or all-terrain vehicle including, but not limited to, snowmobile, mini-bike, amphibious vehicle, motorcycle, go- cart, trail bike, dune buggy or all-terrain cycle.

NATURAL RESOURCES. All flora and fauna within the city and the physical factors upon which they depend, including air, water, soil and minerals.

OFF LEASH DOG EXERCISE AREA. A public, city-designated area where a dog owner is permitted to allow a dog or dogs to socialize and exercise off leash, subject to the rules and regulations for such an area.

PARK. Any land, water area, or trail corridor and all facilities thereon, under the jurisdiction, control or ownership of the city.

PARK PATROL OFFICER. Any regular, temporary, or intermittent employee vested with the legal authority to enforce the City Ordinance.

PERMIT/SPECIAL USE PERMIT. Written permission obtained from the city to carry out certain activities.

PERSON or ***PERSONS.*** Individuals, firms, corporations, societies or any group or gathering whatsoever.

PEST. Any plant, animal, or microorganism that is determined to be undesirable because it conflicts with park management

objectives, creates an annoyance to park guests, or has the potential to create a health hazard.

PESTICIDE. A chemical or biological substance intended to prevent or destroy a pest; and/or a substance to be used as a plant regulator, defoliant, or desiccant. Repellents are not considered pesticide.

PET. A domestic animal who is accompanied by a person in the immediate vicinity of the animal.

POLICE OFFICER. Those individuals that are licensed as a Minnesota police officers by the Minnesota Post Board vested with the legal authority to enforce laws and ordinances.

POLLUTANT. Any substance, solid, liquid or gas, which could cause contamination of air, land or water so as to create or cause a nuisance or render it unclean or noxious or unpure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, or that of wildlife or vegetation.

POSSESSION.

(1) ***PHYSICAL POSSESSION.*** Having a controlled substance on one's person with knowledge of the nature of the substance.

(2) ***CONSTRUCTIVE POSSESSION.*** Having once possessed a controlled substance or continuing to exercise dominion, and control over the substance up to the time of arrest, or aiding and abetting another in possessing a controlled substance.

PROPERTY. Any land, waters, facilities or possessions of the city.

RESPONSIBLE PERSON. The parent, guardian, or person having lawful custody and control of a juvenile.

ROLLERSKATER. Any person riding or propelling oneself by human power or gravity on wheeled devices that are worn on a person's feet or stood upon by a person. Such devices specifically include, but are not limited to, rollerskates, in-line skates, rollerskis, skateboards and scooters.

WATERCRAFT. Any contrivance used or designed for navigation on water.

WEAPON. All those weapons included under M.S. § 609.02, Subd. 6 but also includes spears, crossbows, bows and arrows, sling shots, paintball gun or any other dangerous weapon or projectile.

WILDLIFE. Any living creature, not human, wild by nature, including, but not limited to, mammals, birds, fish, amphibians, insects, reptiles, crustaceans and mollusks.

(Ord. 2002-969, passed 5-13-02; Am. Ord. 2010-1114, passed 4-26-10)

§ 95.02 REGULATION OF PUBLIC USE.

(A) *Park hours* .

(1) Parks shall be open to the public from 6:00 a.m. until 10:00 p.m. It shall be unlawful for any person to enter or remain in a park at any other time without a use permit except when the park area or facility is otherwise designated by the city, or the park area or facility is being used as part of an authorized city program.

(2) The City Manager, his/her designee or an on-duty police/fire supervisor is authorized to close any park or portion thereof at any time for the protection of park property or the public health, safety or welfare.

(B) *Permits.*

(1) City permits shall be required for the exclusive or special use of all or portions of park areas, buildings or trails or for the use of park areas and facilities when they are otherwise closed to the public.

(2) Permits shall be required for an entertainment, tournament, exhibition or any other special use which can reasonably be expected to have 25 or more persons involved or potentially have a detrimental effect on park property or other park users. Security, insurance and/or security bonds may be required and paid by permit holder prior to usage.

(3) It shall be unlawful for a person to violate any provision of a permit.

(C) *Use fee; failure to pay use fee.* It shall be unlawful for any person to use, without payment, any facility or area for which a permit is required and user fee charged, unless the payment is waived by permit.

(Ord. 2002-969, passed 5-13-02; Am. Ord. 2010-1114, passed 4-26-10) Penalty, see § 10.99

§ 95.03 REGULATION OF GENERAL CONDUCT; PERSONAL BEHAVIOR.

(A) *Drug and alcohol use*. It shall be unlawful for any person to:

(1) Use, possess or sell any alcoholic beverage in violation of state statutes or City Code § 112.047 and unless expressly approved by city permit or license.

(2) Consume or display any alcoholic beverage at sites where the city or its agent is a licensed vendor of alcoholic beverages, unless purchased at that site, or authorized by special permit.

(3) Possess or bring beer or wine into a park in kegs, barrels, or other bulk tap quantities, except by city permit.

(B) *Public nuisance; personal safety*. It shall be unlawful for any person to:

(1) Engage in fighting or exhibit threatening, violent, disorderly or indecent behaviors.

(2) Make unreasonable coarse utterance, gesture or display.

(3) Address abusive language tending to incite a breach of the peace or to be inimical to the peace of any person present.

(4) Engage in any course of conduct or participate in any activity in any park after he or she is advised by a police officer or other park employee or park patrol agent having authority to regulate or manage the area, that such conduct or participation is unreasonably and unnecessarily hazardous to the personal safety of said person or another person; or impairs or limits the lawful use and enjoyment of the facility or area by other persons.

(5) Intentionally expose his or her own genitals, pubic area, buttocks, or female breast below the top of areola, with less than a fully opaque covering while on park property, if ten years of age or older.

(C) *Property of others*. It shall be unlawful for any person to:

(1) Intentionally disturb, harass or interfere with a park visitor's property.

(2) Leave or store personal property on city property.

(D) *Littering*. It shall be unlawful for any person to deposit, scatter, drop or abandon in a park any bottles, cans, broken glass, hot coals, ashes, sewage, waste or other material, except in receptacles provided for such purposes.

(E) *Possession and use of firearms; weapons; fireworks* Except for a licensed police officer, it shall be unlawful for any person to:

(1) Have in his/her possession within any city park, fire or discharge, or cause to be fired or discharged across, in, or into any portion of a park all those weapons included under M.S. § 609.02, Subd. 6, but also includes a spear, bow and arrow, crossbow, sling shot, paintball gun, or any other dangerous weapon or projectile, except for purposes designated by the city in areas and at times designated by the city.

(2) Possess, set off or attempt to set off or ignite any firecracker, fireworks, smoke bombs, rockets, black powder guns or other pyrotechnics without a city permit.

(3) Shine a laser in the face of another person.

(F) *Interference with employee performance of duty*. It shall be unlawful for any person to impersonate or pretend to be any employee of the city or interfere with, harass or hinder any employee in the discharge of his/her duties.

(Ord. 2002-969, passed 5-13-02) Penalty, see § 10.99

§ 95.04 REGULATIONS PERTAINING TO GENERAL PARKLAND OPERATION.

(A) *Commercial use; solicitation; advertising; photography*. It shall be unlawful for any person to:

(1) Solicit, sell, or in any manner charge admission, or otherwise peddle any goods, wares, merchandise, services, liquids or

edibles in a park except by authorized concessionaire with a city permit and the required licenses from the city.

(2) Operate a still, motion picture, video or other camera for commercial purposes in a park without a city permit. (News coverage or media journalism is not considered a commercial purpose).

(B) *Pets in parks*. It shall be unlawful for any person to:

(1) Bring a pet into a park unless caged or kept on a leash not more than six feet in length, except that an owner of a dog is not required to restrain a dog or dogs by a chain or leash in an off leash dog exercise area, subject to the rules and regulations for such an area and Chapter 92 of this code.

(2) Permit a pet under his/her control to disturb, harass or interfere with any park visitor, a park visitor's property or park employee.

(3) Tether any animal to a tree, plant, building or park equipment.

(4) Have custody or control of any dog or domestic pet in a park without possessing and using an appropriate device for cleaning up pet feces and disposing of the feces in a sanitary manner.

(C) *Noise; amplification of sound*. It shall be unlawful for any person except emergency equipment operated by public emergency personnel to install, use or operate or permit the use or operation within a park of any of the following devices:

(1) Loudspeaker or sound amplifying equipment without a city permit.

(2) Radios, tape players, phonographs, television sets, musical instruments or other machine or device for the production or reproduction of sound in such a manner as to be disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility.

(D) *Fires* It shall be unlawful for any person to:

(1) Start a fire in a park, except in a designated area, and then only in fire rings or grills, except for city employees or contractors engaged in cleaning or maintaining public property.

(2) Leave a fire unattended or fail to fully extinguish a fire.

(3) Scatter or leave unattended lighted matches, hot coals, burning tobacco, paper or other combustible material.

(E) *Aviation*. It shall be unlawful, except for emergency aircraft, to use city property for a starting or landing field for aircraft, hot air balloons, parachutes, hang gliders or other flying apparatus without a city permit.

(F) *Amusement contraptions*. It shall be unlawful to bring in, set up, construct, manage or operate any amusement or entertainment contraption, device or gadget without authorization of the City Manager or his designee.

(G) *Engine-powered models and toys*. It shall be unlawful for any person to start, fly or use any fuel or battery powered model aircraft, model boat or rocket or like powered toy or model without a city permit unless in an area designated by the city.

(H) *Unlawful occupancy*, It shall be unlawful for any person to:

(1) Enter in any way any building, installation, or area that may be under construction, locked or closed for public use except public safety workers.

(2) Enter in any way or be upon any building, installation or area after the posted closing time or before the posted opening time, or contrary to posted notice in any park.

(3) Enter in any way any building, installation or area after receiving a permit revocation or unlawful occupancy notification during the time period specified.

(Ord. 2002-969, passed 5-13-02; Am. Ord. 2010-1114, passed 4-26-10) Penalty, see § 10.99

§ 95.05 PROTECTION OF PROPERTY, STRUCTURES AND NATURAL RESOURCES.

(A) *Disturbance of natural features*. It shall be unlawful for any person to:

(1) Intentionally remove, alter, injure or destroy any tree, other plant, rock, soil or mineral without a permit.

(2) Dig trenches, holes or other excavations in a park.

(3) Introduce any plant, animal or other agent within a park.

(4) Harvest, grow or cultivate controlled substances.

(B) *Wildlife*. It shall be unlawful for any person to:

(1) Kill, trap, hunt, pursue or in any manner disturb or cause to be disturbed, any species of wildlife, except as permitted by city permit in designated areas.

(2) Remove any animal, living or dead, from a park. Any animal so removed or taken contrary to the provisions of this chapter or laws of the State of Minnesota shall be considered contraband and subject to seizure and confiscation.

(3) Release or abandon any animal within a park.

(4) Feed any wildlife or feral animals in a park.

(C) *Destruction; defacement of park property; signs*. It shall be unlawful for any person to:

(1) Intentionally deface, vandalize or otherwise cause destruction to park property.

(2) Intentionally deface, destroy, cover, damage or remove any placard, notice or sign, or parts thereof, whether permanent or temporary, posted or exhibited by the city.

(3) Graffiti: reference Graffiti Ordinance.

(D) *Release of harmful or foreign substances*. It shall be unlawful for any person to:

(1) Place any debris or other pollutant in or upon any city lands or any body of water in or adjacent to a park or any tributary, stream, storm sewer or drain flowing into such waters.

(2) Discharge waste water or any other wastes in a park, except into designated containers, drains or dumping stations.

(3) Release a pesticide in or upon any park lands except by city permit.

(E) *Interference of park property*. It shall be unlawful for any person to build an encroaching structure, such as a fence or garden, on park property.

(Ord. 2002-969, passed 5-13-02) Penalty, see § 10.99

§ 95.06 REGULATION OF RECREATION ACTIVITY.

(A) *Camping; swimming*. It shall be unlawful for any person to:

(1) Camp in a park without a written city permit.

(2) Wade or swim within a park, except at designated areas.

(B) *Picnicing*. It shall be unlawful for any person to:

(1) Assume exclusive use of a reservation picnic site without a permit.

(2) Use a reservation picnic area without a permit if the area is reserved by permitted group.

(3) Conduct picnic activity at reservation picnic sites contrary to a city permit, or otherwise violate provisions on the city permit.

(4) Set up temporary shelters, tents, tarps, canopies and other such devices without a city permit from the Building Inspection Department.

(C) *Fishing*. It shall be unlawful for any person to fish in a park except in designated areas.

(D) *Horseback riding*. It shall be unlawful for any person to:

(1) Ride, lead or allow a horse or other animal within a park except in designated areas or trails at designated hours.

(2) Ride a horse in a reckless manner so as to create a nuisance or to endanger the safety or property of any park visitor.

(3) Tether a horse to a tree, other plant, building or park equipment.

(4) Allow a horse to graze or browse.

(E) *Cross-country skiing*. It shall be unlawful for any person to:

(1) Cross-country ski on any city golf course or sports complex except on designated trails.

(2) Conduct a race, meet, or ski team practice with over 12 participants on city ski trails without a city permit.

(3) Cross-country ski on park trails contrary to rules and regulations issued by the city or in violation of any posted trail sign.

(F) *Rollerskating; in-line skating*. It shall be unlawful for any person to:

(1) Rollerskate, including the activities of skateboarding, in-line skating and rollerskiing in a park except on paved areas unless posted otherwise.

(2) Rollerskate in a park except in a prudent and careful manner and at a speed that is reasonable and safe with regard to the safety of the operator and others in the immediate area.

(3) Rollerskate except as close to the right hand side of the authorized trail or roadway as conditions permit.

(4) Rollerskate including the activities of skateboarding, in-line skating, and rollerskiing in or on a city building, stairway, railing, or other park structure.

(Ord. 2002-969, passed 5-13-02) Penalty, see § 10.99

§ 95.07 REGULATION OF MOTORIZED VEHICLES, TRAFFIC AND PARKING.

(A) *Motorized recreation vehicles*. It shall be unlawful for any person to operate a motorized recreation vehicle within a park except in such areas and at times as may be designated by the city.

(B) *Snowmobiles*. It is unlawful to operate a snowmobile upon the roadway, public boulevard or on any public lands within the city in accordance with § 73.32 of the Brooklyn Park City Code.

(C) *Vehicle operation*. It shall be unlawful for any person to:

(1) Operate a vehicle at a speed in excess of 15 miles per hour or posted speed limits, except for emergency vehicles.

(2) Operate a vehicle within a park in violation of posted regulations, M.S. Chapter 169, county or municipal traffic codes, or orders or directions of traffic officers or park employees authorized to direct traffic.

(3) Operate a vehicle in a careless or reckless manner.

(4) Operate a vehicle which emits excessive or unusual noise, noxious fumes, dense smoke or other pollutants.

(5) Fail to yield right of way to pedestrians and other trail users.

(D) *Parking vehicles*. It shall be unlawful to:

(1) Park or leave a vehicle standing except in a designated area and then only in a manner so as not to restrict normal traffic flow.

(2) Leave a vehicle standing after posted closing hours without written permission. The city reserves the right to impound cars after 24 hours.

(3) Leave a vehicle in a park for purposes of offering it for sale.

(4) Park or leave a vehicle in an area designated for drop-off only.

(E) *Maintenance of personal vehicles*. It shall be unlawful for any person to wash, grease, change oil or perform other maintenance on any vehicle on park property except in emergencies.

(Ord. 2002-969, passed 5-13-02) Penalty, see § 10.99

§ 95.08 ENFORCEMENT.

(A) Police officers shall, in connection with their duties imposed by law, diligently enforce the provisions of this chapter and may issue citations, arrest, arrest with warrant, and eject from parks persons acting in violation of this chapter.

(B) Police officers shall have the authority to seize, confiscate and impound any substance, plant, animal, vehicle or other article which, upon probable cause, they find to be used or possessed in violation of this chapter.

(C) Park Patrol Officers shall, in connection with their duties as prescribed by the city diligently enforce the provisions of the chapter and, except as limited by the City Manager, issue warnings to persons acting in violation of this chapter.

(D) The city retains the right to require security insurance and/or security bonds for any event or activity occurring on public property if it is determined to be necessary for the safety and security of the park guests or general public. The cost of the above security will be paid by the permit holder prior to the usage of the park facility.

(E) Future usage of park facilities may be revoked if permit holders, participants or spectators violate any section of this chapter.

(Ord. 2002-969, passed 5-13-02) Penalty, see § 10.99

CHAPTER 96: STREETS AND SIDEWALKS

Section

General Provisions

Cross-reference:

House numbering, see § 151.071

Excavations and earth moving, see Ch. 118

Road designations, see § 151.070

GENERAL PROVISIONS

§ 96.01 ROUTING OF TRAFFIC.

(A) The permittee must provide all traffic control for the proposed work and take appropriate measures to assure that during the performance of the excavation work traffic conditions are maintained as nearly normal as practicable at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. The City Engineer or other duly authorized employees may permit the closing of streets to all traffic for a period of time prescribed in the permit if it is deemed necessary. The permittee must route and control traffic including its own vehicles. All traffic control must conform to the latest version of the *Minnesota Manual on Uniform Traffic Control Devices (MMUTCD)* including all appendices. Traffic control for work zones in the public right-of-way are separated into three categories: short term, long term, and roadway closure.

(B) The following steps must be taken by the permittee for each category:

(1) Short term (less than 12 hours).

(a) Obtain an approved right-of-way permit;

(b) Use appropriate traffic control plan from Appendix B of MMUTCD;

(c) Notify the City Engineer upon the removal of traffic control devices and completion of the work.

(2) Long term (12 hours or more).

(a) Submit and receive approval of a traffic control plan;

(b) Obtain an approved right-of-way permit;

(c) Notify the City Engineer at least one day in advance of the implementation of the plan;

(d) Monitor and maintain the traffic control devices daily;

(e) Notify the City Engineer upon the removal of the traffic control devices and completion of the work.

(3) Roadway closure.

(a) Submit and receive approval of a detour and traffic control plan;

(b) Obtain an approved right-of-way permit;

(c) Post notification signs of roadway closure and notify police, fire, emergency response, and other roadway users at least one week in advance to the closing of any street;

(d) Notify the City Engineer at least two days in advance of the implementation of the plan;

(e) Monitor and maintain the traffic control devices daily;

(f) Obtain all other state, county, or municipal permits required;

(g) In the case that there are no existing streets to utilize as a detour route, the permittee must construct all detours at its expense and in a manner approved by the City Engineer;

(h) Notify the City Engineer, police, fire, and emergency response upon the removal of the traffic control devices and completion of the work.

('72 Code, § 650:14) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.02 OBSTRUCTION AND IMPAIRMENT OF FIRE HYDRANTS AND FIRE-PROTECTION EQUIPMENT.

The excavation work must be performed and conducted so as not to interfere or obstruct fire hydrants, Fire Department inlet connections or fire-protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The Fire Department must not be deterred or hindered from gaining immediate access to fire-protection equipment or hydrants. Materials or obstructions must not be placed within 15 feet of fire-protection equipment or hydrants.

('72 Code, § 650:17) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.03 PROTECTION OF TRAFFIC, UTILITIES, PROPERTY, AND THE LIKE.

(A) *Protection of traffic.* The permittee must stockpile excavated materials in a manner as to not encroach upon any streets, sidewalks, trailways, or sight distances for intersections. If stockpiling interferes with facilities as stated above, the permittee must employ the use of traffic control devices as stated in § 96.01 of this chapter. Adequate planking for sidewalk and trailway pedestrian crossings must be placed in a manner as approved by the City Engineer and OSHA trench safety standards. If a sidewalk or trailway must be closed off, the permittee must utilize traffic control devices to delineate the work zone and show an alternate route. In the case that there are no existing facilities to use as an alternate route, the permittee must construct a detour at its expense and in a manner approved by the City Engineer.

(B) *Removal and protection of utilities.* The permittee must not interfere with any existing utility without the written consent of the City Engineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this must be done by its owner. No utility owned by the city will be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned utilities must be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee must support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across said work. In case any of the pipes, conduits, poles, mires or apparatus should be

damaged, they must be repaired by the agency or person owning them and the expense of such repairs will be charged to the permittee, and its bond will be liable therefor. The permittee is responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond is liable therefor. The permittee must inform itself as to the existence and location of all underground utilities by contacting the Gopher State One Call System or other similar service as approved by the City Engineer and protect the same against damage.

(C) *Protection of adjoining property.* The permittee must at all times and at its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. The permittee must, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and is responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod must be carefully cut and rolled and replaced after ditches have been backfilled as required in this chapter. All construction and maintenance work must be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as equal to or better to that which existed before such work began. The permittee must not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property the appropriate department or official having control of the property.

(D) *Protective measures.* The permittee must erect such fence, railing or barriers about the site of the excavation work as will prevent danger to persons using the city street or sidewalks, and such protective barriers must be maintained until the work is completed or the danger removed. At twilight there must be placed upon the place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which must be kept burning throughout the night during the maintenance of the obstructions. It is unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public.

('72 Code, §§ 650:18 - 650:24) (Am. Ord. 1995-779, passed 4-24- 95) Penalty, see § 10.99

§ 96.04 ATTRACTIVE NUISANCE.

It is unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health.

('72 Code, § 650:26) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.05 CARE OF EXCAVATED MATERIAL.

(A) All material excavated from trenches and piled adjacent to the trench or in any street must be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property.

(B) Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such might be the case in a narrow alley, the City Engineer has the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It is the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

('72 Code, § 650:28) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.06 DAMAGE TO EXISTING IMPROVEMENTS.

All damage done to existing improvements during the progress of the excavation work must be repaired by the permittee. Materials for such repair must conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the City Engineer has the authority to cause the necessary labor materials to be furnished by the city and the cost will be charged against the permittee, and the permittee is also liable on its bond therefor.

('72 Code, § 650:30) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.07 PROPERTY LINES AND EASEMENTS.

Property lines and limits of easements must be indicated on the plan of excavation submitted with the application for the excavation permit and it is the permittee's responsibility to confine excavation work within these limits.

('72 Code, § 650:32) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.08 CLEAN-UP.

As the excavation work progresses all streets and private properties must be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All clean-up operations at the location of the excavation must be accomplished at the expense of the permittee and must be completed to the satisfaction of the City Engineer. From time to time as may be ordered by the City Engineer and in any event immediately after completion of the work, the permittee must at its own expense clean up and remove all refuse and unused materials of any kind resulting from the work and upon failure to do so within 24 hours after having been notified to do so by the City Engineer, the work may be done by the City Engineer and the cost thereof charged to the permittee and the permittee is also liable for the cost thereof under the surety bond provided hereunder.

('72 Code, § 650:34) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.09 PROTECTION OF WATER COURSES.

The permittee must provide for the flow of all water courses, sewers or drains intercepted during the excavation work and must replace the same in as good condition as it found them or must make such provisions for them as the City Engineer may direct. The permittee must not obstruct the gutter of any street but must use all proper measures to provide for the free passage of surface water. The permittee must make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and must be responsible for any damage resulting from its failure to so provide.

('72 Code, § 650:36) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.10 BREAKING THROUGH PAVEMENT.

(A) Whenever it is necessary to break through existing pavement for excavation purposes and where trenches are to be four feet or over in depth, the pavement in the base must be removed to at least six inches beyond the outer limits of the sub-grade that is to be disturbed in order to prevent settlement, and a six-inch shoulder of undisturbed material must be provided in each side of the excavated trench.

(B) The face of the remaining pavement must be approximately vertical. A power-driven concrete saw must be used so as to permit complete breakage of concrete pavement or base without rugged edges. Asphalt paving must be scored or otherwise cut in a straight line. No pile driver may be used in breaking up the pavement.

('72 Code, § 650:38) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.11 TUNNELS.

Tunnels under pavement are not permitted except by permission of the City Engineer and if permitted must be adequately supported by timbering or encasing and backfilling under the direction of the City Engineer.

('72 Code, § 650:40) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.12 BACKFILLING.

Backfilling in any street opened or excavated pursuant to an excavation permit issued hereunder must be compacted to a degree equivalent to the requirements as outlined in the city's standard detail specifications for excavation and restoration procedures. Compacting must be done by mechanical tampers or vibrators as required by the soil in question and sound engineering practices

generally recognized in the construction industry.

('72 Code, § 650:42) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.13 ROCK EXCAVATING AND BACKFILL MATERIAL.

Whenever any excavation for the laying of pipe is made through rock, the pipe must be laid six inches above the rock bottom of the trench and the space under, around and six inches above the pipe must be backfilled with clean river sand, non- corrosive soil or one-quarter inch minus gravel. Broken pavement, large stones, and debris must not be used in the backfill. Use of frozen backfill is prohibited, in any case.

('72 Code, § 650:48) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.14 RESTORATION OF SURFACE.

(A) The permittee must restore the surface of all streets, broken into or damaged as a result of the excavation work, to its original condition in accordance with the specifications of the City Engineer. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the pavement is to be replaced before the opening of the cut to traffic, the fill above the bottom of the paving slab must be made with suitable material well tamped into place and this fill must be topped with a minimum of at least one inch of bituminous mixture which is suitable to maintain the opening in good condition until permanent restoration can be made. The crown of the temporary restoration must not exceed one inch above the adjoining pavement. The permittee must exercise special care in making such temporary restorations and must maintain the restorations in safe traveling condition until such time as permanent restorations are made. The asphalt which is used must be in accordance with the City Engineer specifications.

(B) Permanent restoration of the street must be made by the permittee in strict accordance with the specifications prescribed by the City Engineer to restore the street to its original and proper condition, or as near as may be.

(C) Acceptance or approval of any excavation work by the Engineer does not prevent the city from asserting a claim against the permittee and/or its surety under the surety bond required hereunder for incomplete or defective work if discovered within 12 months from the completion of the excavation work. The City Engineer's presence during the performance of any excavation work does not relieve the permittee of its responsibilities hereunder.

('72 Code, § 650:52) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.15 TRENCHES IN PIPE LAYING.

Except by special permission from the City Engineer, no trench may be excavated more than 50 feet in advance of the pipe laying nor left unfilled more than 100 feet where the pipe has been laid. The length of the trench that may be opened at any one time must not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches must be braced and shored according to OSHA, 29 C.F.R. Part 1926, Occupational Safety and Health Standards for Excavations. Bracing, shoring, pipe, or appurtenance materials must not be left in any trench.

('72 Code, § 650:54) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.16 PROMPT COMPLETION OF WORK.

The permittee must prosecute with diligence and expedition all excavation work covered by the excavation permit and must promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor. It is the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for one year after restoring it to its original condition.

('72 Code, § 650:56) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.17 URGENT WORK.

If in the City Engineer's judgment, traffic conditions, the safety, or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the City Engineer has full power to order, at the time the permit is granted, that a crew of men and women and adequate facilities be employed by the permittee 24 hours a day to the end that the excavation work may be completed as soon as possible.

('72 Code, § 650:58) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.18 EMERGENCY ACTION.

In the event of any emergency in which a sewer main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling the sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, must immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, the person owning or controlling the facility must apply for an excavation permit not later than the end of the next succeeding day during which the city offices are open for business, and must not proceed with permanent repairs without first obtaining an excavation permit hereunder.

('72 Code, § 650:60) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.19 NOISE, DUST AND DEBRIS.

Each permittee must conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee must take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust, and unsightly debris and during the hours of 10:00 p.m. and 7:00 a.m., must not use, except with the express written permission of the City Engineer or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighbors property.

('72 Code, § 650:62) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.20 PRESERVATION OF MONUMENTS.

The permittee must not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the City Engineer.

('72 Code, § 650:64) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.21 INSPECTIONS.

The City Engineer and other duly authorized employees of the city must make such inspections as are reasonably necessary in the enforcement of this chapter. The City Engineer has the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this chapter.

('72 Code, § 650:66) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.22 CITY RIGHT TO RESTORE SURFACE.

Work must progress in an expeditious manner until completion in order to avoid unnecessary inconvenience to traffic. In the event that the work is not performed in accordance with the applicable regulations or ceases or is abandoned without due cause, or if the permittee fails to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by the permit or otherwise fails to complete the excavation work covered by the permit, the City Engineer, if the City Engineer deems it advisable, may, after 24 hours notice in writing to the holder of the permit of intent to do so, do all work and things necessary to restore the street

and to complete the excavation work. The permittee is liable for the actual cost thereof and 25% of such cost in addition for general overhead and administrative expenses. The city will have a cause of action for all fees, expenses and amounts paid out and due it for such work and will apply in payments of the amount due it any funds of the permittee deposited with the city and the city will also enforce its rights under the permittee's surety bond provided pursuant to this chapter.

('72 Code, § 650:68) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.23 MAINTAIN DRAWINGS.

Users of sub-surface street space must maintain accurate drawings, plans, and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps must be filed with the City Engineer within 60 days after new installations, changes or replacements are made.

('72 Code, § 650:70) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.24 APPLICABILITY TO CITY WORK.

The provisions of this chapter are not applicable to any excavation work under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city necessitating openings or excavations in streets.

('72 Code, § 650:72) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.25 PUBLIC SERVICE COMPANIES.

All persons operating public utilities in the city under franchises granted by the city and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work are not required to apply for permit but are required to perform the work and bring it to completion as promptly as practicable and to that end must employ an adequate standing force. Any person operating any such public utility must however, comply with other requirements of this chapter, including the surety bond and deposit requirements.

('72 Code, § 650:74) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 96.26 LIABILITY OF CITY.

This chapter is not to be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor is the city or any official or employee thereof deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work.

('72 Code, § 650:76) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.27 REQUIREMENTS AND ADDITIONAL PROVISIONS.

The provisions of this chapter are not in lieu of but in addition to all utility connection permits that may be required by ordinance, or by the rules and regulations of the Engineer of the city.

('72 Code, § 650:78) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.28 ICE AND SNOW REMOVAL.

The owners or occupant of any building, grounds, or premises within the corporate limits must keep the public sidewalks along or in front of the same free from snow and ice and must sprinkle the sidewalk with sand or ashes, if necessary.

('72 Code, § 655:00) (Am. Ord. 1973-159(A), passed 4-24-95) Penalty, see § 10.99

PERMITS AND INSURANCE

§ 96.40 EXCAVATION PERMIT.

It is unlawful for any person to dig up, break, excavate, tunnel, undermine or in any manner disturb any public right-of-way or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit or leave upon any street, any earth or other excavated material obstructing or tending to interfere with the free use of the public right-of-way or easement, unless such person has first obtained an excavation permit therefor from the City Engineer as herein provided.

('72 Code, § 650:00) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 96.41 APPLICATION.

No excavation permit will be issued without submission of a written application on a form provided by the City Engineer. The written application must state the name and address of the applicant, the nature, location or purpose of the excavation, the date of commencement and date of completion of the excavation, and other data as may reasonably be required by the City Engineer. The application must be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to the excavation and of the proposed excavated surfaces, the location of the excavation work and such other information as may be prescribed by the City Engineer or other duly authorized employee.

('72 Code, § 650:02) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.42 DISPLAY OF EXCAVATING PERMITS.

Permits for excavations will be issued in writing and the permit must be kept on the site of the work while it is in progress in the custody of the individual in charge, and must be exhibited upon request made by any city official or police officer.

('72 Code, § 650:04) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.43 FEE.

Before a permit is issued, the applicant requesting the permit must pay a fee in the amount set forth in the Appendix to this code to the city's cashier for each location covered by the permit. Each transverse excavation and each 150 feet or portion thereof of longitudinal excavation is deemed a location.

('72 Code, § 650:08) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.44 SURETY BOND.

(A) Before an excavation permit as herein provided is issued, the applicant must deposit with the City Engineer a surety bond in the minimum amount of $5,000 payable to the city.

(B) The required surety bond must:

(1) Be with good and sufficient surety;

(2) Be by a surety company authorized to transact business in the State of Minnesota;

(3) Be dated and signed by an authorized officer of the principal and by a representative of the surety (attorney-in- fact);

(4) Be conditioned upon the permittee's compliance with this chapter and to secure and hold the city, its officials, and employees harmless against any and all claims, damages, liabilities, losses, actions, suits, judgments, or other costs arising from the excavation and other work covered by the excavation permit or for which the city, Council or any city employee may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the City Engineer or other duly authorized employee, all openings, and excavations made in streets, and to maintain any street where excavation is made in as good condition for the period of 12 months after the work is done, usual wear and tear excepted as it was in before the work was done. Any settlement of the surface within the one-year period is deemed conclusive evidence of defective backfilling by the permittee. Nothing herein contained is construed to require the permittee to maintain any repairs to pavement made by the city if such repairs should prove defective. Recovery on such bond for any injury or accident must not exhaust the bond but it must in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city's giving written notice to the permittee of such suit or claim, any final judgment against the city requiring it to pay for such damage is conclusive upon the permittee and surety. An annual bond may be given under this provision which must remain in force for one year conditioned as above, in the amount specified above and in other respects as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from the date;

(5) Be described as a permit bond to carry on the business of excavations within the public right-of-way or easements of the city for the tapping, installation, modification, or construction of utilities, driveways, or streets.

(6) Be identified with a reference or claim number;

(7) Identify the principal (contractor) and the surety company;

(8) Identify the principal and the surety company both as being bound to the owner (city);

(9) Be an amount as specified on the permit. The dollar amounts should be identified numerically in addition to being written out with words;

(10) Have a corporate seal which clearly identifies the surety company;

(11) Pay all damages imposed upon it for violation of any federal or state law, city or county ordinance, or conditions of any permit issued thereunder;

(12) Indemnify any person who suffers a loss through violation by said principal of any federal or state law, city or county ordinance, or conditions of any permit issued thereunder;

(13) Guaranty to replace or perform again in a faithful and adequate manner all work and materials not in accordance with the applicable federal or state law, city or county ordinance, and permits;

(14) Indemnify any person for whose benefit the applicable federal or state law, city or county ordinance specifically provides indemnification;

(15) Faithfully satisfy all judgements based on tort liability which are obtained by reason of negligence through the business which negligence is attributable to the principal or agent.

('72 Code, § 650:10) (Am. Ord. 1995-779, passed 4-24-95)

§ 96.45 INSURANCE.

The permittee must hold the city harmless and agrees to defend and indemnify the city and the city's employees and agents, for any claims, damages, losses, and expenses related to the permittee's excavation work. A permittee, prior to the commencement of excavation work hereunder, must furnish the City Engineer satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit general liability, worker's compensation, and business automotive insurance as specified from time to time by the City's Risk Management Office. The insurance must be duly issued by an insurance company authorized to do business in this state. The city must be named as additional insured under that insurance for any claims arising from the permittee's excavation work against either the city or the permittee. The permittee's insurance must be the primary insurance for the city.

('72 Code, § 650:12) (Am. Ord. 1995-779, passed 4-24-95)

CHAPTER 97: GRASS, WEED, AND TREE REGULATIONS

Section

§ 97.01 PURPOSE.

(A) It is the purpose of this chapter to prohibit the uncontrolled growth of vegetation, while permitting the planting and maintenance of landscaping or garden treatments that add diversity and a richness to the quality of life. There are reasonable expectations regarding the maintenance of vegetation because vegetation that is not maintained may threaten public health, safety, and order, and may decrease adjacent property values. It is also in the public's interest to encourage diverse landscaping and garden treatments, particularly those that restore native vegetation, which requires less moisture and places a lower demand on the public's water resources.

(B) The city recognizes the value of a healthy urban forest to its residence and visitors. Trees benefit the city's natural environment by protecting against wind and water erosion, providing a natural buffer between land uses, supplying shade and insulation that increases energy conservation, and adding to the habitat for wildlife. Further, trees are a community asset. They improve privacy, increase livability standards among residents, and add value to property. The city works to enhance, preserve and protect the urban forest within its boundaries by promoting and establishing the growth of new trees, ensuring proper and adequate tree maintenance, and monitoring the removal all public trees. The following sections provide regulations and standards for the planting, maintenance and removal of shade trees within the city.

(C) Further the Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by M.S. § 89.001, to be a shade tree pest and prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action. Such known diseases and pests currently include Dutch Elm Disease, Oak Wilt, Emerald Ash Borer and Gypsy Moth. It is the intent of this section to also include any yet unknown pests and to include them immediately when identified by the Commissioner of Agriculture. It has further been determined that the loss of elm, ash and oak trees growing upon private and public property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the Council to control and prevent the spread of these diseases and this section is enacted for that purpose.

('72 Code, § 1020:00) (Ord. 1998-871, passed 4-13-98; Am. Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.02 DEFINITIONS.

For the purpose of this chapter, the following definitions apply:

ABATE . To put a stop to or put an end to a nuisance.

BUFFER STRIP. A managed strip of land used to separate differing landscapes and to minimize the impact to adjacent land uses. A buffer strip may include low-growing vegetation and grasses less than eight inches in height, mowed turf-grass, wood chips, rock, landscape edging, trees and shrubs.

CITY MANAGER . The City Manager or the City Manager's designee.

CITY TREE INSPECTOR . A person or persons appointed by the City Council who is certified by the Minnesota Commission of Agriculture to plan, direct, and supervise all requirements for controlling shade tree diseases throughout the designated disease control area.

CONTROL . To destroy the above ground growth of noxious weeds by a lawful method that prevents the maturation of noxious weed propagating parts and their spread from one area to another.

DISEASE CONTROL AREA . The entirety of Brooklyn Park is designated a disease control area in which this shade tree disease ordinance and control procedures shall be enacted.

DISEASED TREE. Any tree within the disease control area diagnosed with any of the shade tree diseases as defined by the Commissioner of Agriculture.

ERADICATE . To destroy the above ground growth and the roots of noxious weeds by a lawful method that prevents the maturation of noxious weed propagating parts and their spread from one area to another.

GRASS . Grasses commonly used in regularly cut lawn areas, such as bluegrass, fescue, rye grass blends, or other similar grasses.

HAZARD TREE . Any tree with a condition or in a location that constitutes a hazard to life or property.

MANAGED NATURAL LANDSCAPE. A planned, intentional and maintained planting of native or non-native grasses, wildflowers, forbs, ferns, shrubs or trees, including but not limited to rain gardens, prairie or meadow vegetation, and ornamental plantings.

MEADOW OR PRAIRIE VEGETATION . Grasses and flowering broad-leaf plants that are native to, or adapted to, the State of Minnesota, and that are commonly found in meadow and prairie plant communities, except weeds.

NOXIOUS WEED . Any plant which is identified by the State Commissioner of Agriculture as a noxious weed pursuant to M.S. § 18.77, Subd. 8 or as a county noxious weed pursuant to M.S. § 18.771(e).

ORNAMENTAL PLANTS. Grasses, perennials, annuals and groundcovers purposefully planted for aesthetic reasons.

PUBLIC NUISANCE . Any noxious weed as defined by M.S. § 18.77, Subd. 8, tree, or any other vegetation which endangers public health, safety, or welfare or which is in violation of city, county, state or federal laws.

RAIN GARDEN. A native plant garden that is designed not only to aesthetically improve properties, but also to reduce the amount of stormwater and accompanying pollutants from entering streams, lakes and rivers.

SHADE TREE DISEASE . Dutch Elm Disease caused by *Ophiostoma ulmi* [formally *Ceratocystis ulmi*] or Oak Wilt caused by *Ceratocystis fagacearum* or any other disease identified and designated as a shade tree disease by the Minnesota State Commissioner of Agriculture.

SHADE TREE PEST. Any vertebrate or invertebrate animal, plant pathogen, or plant that is determined by the Commissioner of Agriculture to be harmful, injurious, or destructive to shade trees or community forests.

STREET TREE . Any tree planted in the public right-of-way.

TREE. Any woody plant, having a single woody trunk(s) and a potential diameter of two inches or more.

TURF-GRASS LAWN. A lawn comprised mostly of grasses commonly used in regularly cut lawns or play areas (such as but not limited to bluegrass, fescue, and ryegrass blends), intended to be maintained at a height of less than eight inches.

WEED . Any noxious weed, buffalobur, burdock, common cocklebur, crabgrass, dandelions, jimsonweed, quackgrass, common and giant ragweed, field sandbur, velvetleaf, and wild sunflower. Weeds also include anything that is horticulturally out of place. For

example, a tree seedling is a weed in a vegetable garden.

('72 Code, § 1020:00) (Ord. 1998-871, passed 4-13-98; Am. Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.03 ADOPTION OF STATE LAW BY REFERENCE.

The following regulatory provisions are hereby adopted by reference and made a part of this code as if set out here in full, except as hereinafter provided. A copy of said agency rules herewith incorporated is on file in the office of the City Clerk.

(A) Minnesota Noxious Weed Law, M.S. §§ 18.75 to 18.88, for the control of noxious weeds within the city.

(B) M.S. §§ 18.011 through 18.024 Statutes of the Minnesota Department of Agriculture, Plant and Animal Pest Control together with amendments.

(C) M.S. Chapter 89, as amended, and rules promulgated thereunder.

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.20 WEED AND GRASS MAINTENANCE AND ELIMINATION; DUTY OF OWNER.

(A) In determining whether a violation of this chapter exists, the following factors must be considered by the City Manager or designated agent:

(1) The weeds or grasses endanger the public health, safety, or welfare including whether the weeds or grasses create a general aesthetic depreciation of the neighborhood; or

(2) The weeds are noxious as defined herein.

(B) If a violation is declared, it is the duty of every owner of property including property abutting any public street or alley to cause all grass and weeds to be kept cut to the center of such platted street or alley, including the public boulevard. If the grass or weeds in such a place are eight inches or more in height it is prima facie evidence of a violation of this chapter.

(C) *Exemptions*. The following items are exempted from the grass and weed requirements in this chapter:

(1) The portion of any privately or publicly-owned lot or tract of land in the city that contains a ponding area, drainage way, or public water wholly or partially within its legal boundary.

(a) The owner of the property described in (C)(1) may establish a strip of vegetation between the normal water level and the high water level along the ponding area, drainage way, or public water of not more than 20 feet. This strip of vegetation may be allowed to grow to any height and will not be declared a nuisance under this chapter. However, the owner of the property is required to control or eradicate noxious weeds. No grasses or weeds below the normal water level of the ponding area, drainage way or public water will be declared a nuisance under this chapter.

(2) The portion of any privately or publicly-owned lot or tract of land in the city that contains an area with side slopes of 25% or greater wholly or partially within its legal boundary.

(3) Parks and natural areas owned by the city and rights-of-way owned and maintained by the county and state.

(4) Any area established as a managed natural landscape:

(a) Managed natural landscapes may include plants and grasses eight inches or more in height and which have gone to seed, but may not include any weeds or noxious weeds and must be maintained so as to not include unintended vegetation; and

(b) Managed natural landscapes may not include any plantings, which due to location and manner of growth constitute a hazard to the public or may cause injury or damage to persons or property when such growth is in violation of other applicable sections of city code; and

(c) The area is established and maintained in accordance with generally accepted practices; and

(d) Managed natural landscapes shall not include turf-grass lawns left unattended for the purpose of returning to a natural state; and

(e) A buffer strip not less than three feet from side and rear property lines must be maintained when a managed natural landscape covers more than 25% of the landscaped area of the entire yard. A buffer strip is not, however, required if:

1. A fully opaque fence at least four feet in height is installed along the lot line adjoining the managed natural landscape area;

2. The adjacent property is not being used for residential purposes; or

3. The adjacent residential property also contains a managed natural landscape area covering more than 25% of the landscaped area of the entire yard.

(f) That while a managed natural landscape is being established and covers more than 25% of the landscaped area of the entire yard, a sign must be posted on the property in a location likely to be seen by the public, advising that a managed natural landscape is being established. The sign must be no smaller than eight inches square and no larger than one foot square, displayed no higher than three feet, and set back five feet from the property line. If the managed natural landscape covers less than 25% of the landscaped area of the entire yard a sign is not required.

(5) Pasture land that is currently being used for the exercise or feeding of domestic hoofed animals and is surrounded by a permanent fence that separates the pasture from property used for other purposes, is at least five acres in size, and undeveloped with any habitable building.

(6) Vacant parcels of land larger than five acres in size, (undeveloped with any habitable building) with a physical barrier to separate the vacant land from developed adjacent properties. If a physical barrier does not exist, a 15-foot transition strip of land on that property which is mowed or otherwise maintained is required next to the developed adjacent properties. A 15-foot transition strip must also be mowed and maintained along all public right-of-ways, streets, trails and alleys.

(7) Platted lots located in subdivisions where 50% or less of the lots have been developed provided:

(a) A 15-foot transition strip must be mowed and maintained along all public right-of-ways, streets, trails and alleys.

(b) Vacant lots located adjacent to developed properties must comply with this chapter.

(8) The portion of any privately or publicly owned lot or tract of land in the city that contains a wooded area as determined by the City Manager or designated agent.

('72 Code, § 1020:00) (Ord. 1983-439(A), passed 10-24-83; Am. Ord. 1998-871, passed 4-13-98; Am. Ord. 2002-973, passed 5-28-02; Am. Ord. 2010-1112, passed 4-5-10; Am. Ord. 2014-1170, passed 5-27-14) Penalty, see § 10.99

§ 97.25 PUBLIC NOTIFICATION OF WEED ELIMINATION.

In accordance with M.S. § 18.83, on or before May 15 of each year, and at such other times as ordered by the City Manager, the City Clerk must publish once in the official newspaper a notice directing owners and occupants of property within the city to destroy all weeds declared to be a nuisance and stating that if not so destroyed the weeds will be destroyed as directed by the City Manager at the expense of the owner. If expenses are not paid prior to the following September 1, the charge for such work will be made a special assessment against the property concerned.

('72 Code, § 1020:05) (Am. Ord. 1998-871, passed 4-13-98; Am. Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.30 CITY TREE INSPECTOR; DUTIES AND INSPECTIONS.

(A) *Duties*. The City Tree Inspector shall administer the shade tree disease control programs for the city in accordance with the city code. Official duties include inspections, diagnosis, and the supervision of the removal of diseased or hazard trees.

(B) *Interference with duties*. It shall be unlawful for any person to prevent, delay, or interfere with the City Tree Inspector while engaging in his or her official duties.

(C) *Entry upon private premises*. The City Tree Inspector or his/her duly authorized agents may enter upon private property premises at any reasonable time for the purpose of carrying out any of the duties assigned under this section. The City Tree Inspector will attempt to make reasonable notice to the property owner before entry in accordance with M.S. § 89.63(B). If the City Tree Inspector determines that a tree is a public nuisance or constitutes an immediate threat to the public health or safety, the Inspector may

proceed with abatement of the nuisance under § 97.55(B)4).

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.35 PUBLIC TREE PLANTING AND MAINTENANCE.

(A) *Public tree care*. The city shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the public right-of-ways and on public grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such right-of-ways and public grounds. This does not prohibit the planting of "street trees" by adjacent property owners providing that the planting and maintenance of said trees is in accordance with Operations & Maintenance Department Forestry and Public Easement Maintenance Policies.

(B) *Street tree selection*. The official street tree species authorized for the city shall be as indicated in the Operation & Maintenance Department Forestry Policy. No other species may be planted as street trees without written permission from the City Tree Inspector. No street tree shall be removed without permission from the City Tree Inspector.

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.40 PRIVATE TREE PLANTING AND MAINTENANCE.

(A) *Utilities and drainage*. Trees, plants, and shrubs shall not be placed where they interfere with the site drainage or where they shall require frequent pruning in order to avoid interference with overhead power lines. Plant materials shall be located to provide reasonable access to all utilities.

(B) *Pruning and corner clearance*. Every owner of any tree, plant and shrub overhanging or bordering any street or right-of-way including sidewalks within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the sidewalk and 19 feet above the surface of the street. Said owner shall remove all dead, diseased, or dangerous trees, plants, and shrubs or broken or decayed limbs that constitute a menace to the safety of the public. If private trees encroach in the right-of-way, the city may trim private trees so they meet the above listed requirements.

(1) All trees and landscaping is subject to Clearview Triangle Requirements of §§ 152.223 and 152.323 or as further modified.

(2) All trees and landscaping must maintain a five foot clear zone around fire hydrants as stated in the Uniform Fire Code.

(C) *Dead or damaged tree removal on private property*. The city shall have the right to cause the removal of any dead, damaged, or diseased tree or part there of as specified in § 97.50 (Nuisances).

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.45 SHADE TREE DISEASE CONTROL, PREVENTION, PEST CONTROL AND ABATEMENT.

(A) *Dutch Elm Disease***.** The City Tree Inspector shall inspect premises and places within the designated Dutch Elm disease control area of the city as many times as practical or necessary to determine whether the disease exists.

(1) *Elm Trees*. Dutch Elm infected trees shall be those trees that show any stage of infection. Property owners with trees identified as infected with Dutch Elm from March 10 through September 15 shall be made to remove these elm trees within 20 days of the notification. Property owners issued notifications on infected trees from September 15 through March 10, shall have elm trees removed prior to April 1.

(2) *Elm Wood*. Dutch Elm infected wood, logs, or stumps shall be disposed of by burning, chipping, or removal to an authorized disposal site or if retained shall be debarked by April 1st. The stockpiling and storage of elm logs with the bark intact shall only be allowed during the period of September 15 through April 1st.

(B) *Oak Wilt*. The City Tree Inspector shall inspect premises and places within the designated Oak Wilt control area of the city as many times as practical or necessary to determine whether any disease exists.

(1) *Oak trees*. All oak trees within the designated Oak Wilt control area of the city diagnosed as having Oak Wilt should be

isolated from neighboring healthy oak trees of the same species by chemical or mechanical disruption of common root systems to prevent root graft transmission of the Oak Wilt fungus.

(2) To control overland spread of Oak Wilt, the pruning of oaks shall be avoided during the most susceptible period of infection, from April 15 until July 1. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, the person or entity pruning shall immediately apply a non-toxic tree wound dressing.

(a) *Red Oaks.* To prevent the Oak Wilt fungus from producing spores and to prevent overland spread of this fungus, any diseased material of the red oak group that wilt in July and August of one year shall be removed from both private and public property by April 1st of the following year.

1. Any branch greater than two inches in diameter of the red oak group determined to be hazardous and not salvaged shall be disposed of by burning, chipping, or removal to an authorized dump site prior to April 1st of the year following the appearance of symptoms. Dead standing red oaks that have advanced beyond the potential for spore production need not be removed except where they constitute a hazard to life or property as determined by the City Tree Inspector.

2. Stumps of trees of the red oak group removed due to Oak Wilt shall be completely covered, removed or debarked to the ground line to eliminate all possibilities of spore formation and overland disease spread.

(b) *White Oaks.* Trees of the white oak group (i.e. white oak, bur oak, bicolor oak) diagnosed as having Oak Wilt should be isolated by root graft disruption as stated in § 97.45(D) (Root Graft Disruption).

(3) *Oak Wood.* Any hazardous oak wood to be used as fuel wood or to be salvaged for other purposes must be debarked or completely covered by heavy plastic (4 mil or greater) from April 15 until July 1 of the year following the appearance of symptoms. After July 1 the wood does not need to be covered.

(C) *Diagnosis.* Diseased shade trees shall be identified by generally accepted field symptoms such as wilting, yellowing of leaves, and/or staining of wood under bark. The Minnesota Department of Agriculture tree disease laboratory or other laboratories capable of performing such services approved by the Minnesota Commissioner of Agriculture shall do confirmation testing, when determined to be necessary by the City Tree Inspector.

(D) *Root graft disruption (barriers) at property boundaries.* If the City Tree Inspector finds that Dutch Elm disease or Oak Wilt threatens to cross property boundaries or disease control area boundaries, the City Tree Inspector may require root graft disruption to prevent the spread of disease. If plowing or trenching is not possible due to terrain, location or buried utilities, the City Tree Inspector may require alternate control measures. These control measures will be in accordance with current technology and plans as may be recommended by the Minnesota Department of Agriculture, Pesticide and Disease Control, M.S. Chapter 1505. If, however, after the City Tree Inspector identifies the location for the installation of a barrier or alternate control measure, the City Tree Inspector further determines that the installation of the barrier or alternate control measure is impossible because of the presence of pavement or obstructions such as a septic system or other underground utilities, the City Tree Inspector may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and the marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following inspection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked. Expenses related to the installation of such barriers and/or the removal of these trees is at the expense of the property owner.

(1) The charge, or any portion thereof, for any necessary root graft barriers or other control measures may be assessed against the property on which the root graft barriers or other control measures are placed.

(2) Because Oak Wilt is a community problem and because Oak Wilt control may benefit an entire neighborhood, the City Tree Inspector will require neighborhood participation, shall encourage cooperation, including cost sharing, in root graft disruption and other control efforts, especially where Oak Wilt is in danger of spreading across property boundaries.

(E) *Transporting diseased Elm and Oak wood.* Unless transporting elm wood or red oak wood to an authorized disposal site, it is unlawful for any person to transport within the City any bark intact elm wood or wood from the red oak group that is determined to be hazardous.

(F) *Emerald Ash Borer (EAB).* The city has an adopted Emerald Ash Borer Preparedness and Management Plan, (City Council Resolution 2011-158). The City Tree Inspector shall inspect premises and places within the city limits as many times as practical or necessary to determine whether the pest exists.

(1) *Ash trees.* EAB infested trees shall be those trees that show any stage of infestation. Property owners with trees identified as infected with EAB from May 1 to August 31 shall be made to remove these ash trees after August 31 of the same year and prior to

May 1 of the following year. Property owners issued notifications on infested trees after September 1, shall have the ash trees removed prior to May 1of the following year.

(2) *Ash wood*. EAB infected wood, logs, or stumps shall be disposed of within Hennepin County, either by grinding to a small diameter (less than one inch in two dimensions), burning or burying. No ash wood may be transported out of Hennepin County due to a state ordered quarantine on transporting ash wood to help control the spread of Emerald Ash Borer.

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.50 NUISANCES.

The following are public nuisances:

(A) Any living or dead standing tree or part thereof within the city boundaries, located on public or private property, constituting a hazard to life or property.

(B) Any living or dead standing tree with a shade tree pest or disease as defined in § 97.01(C).

(C) Any weeds or grasses eight inches or more in height as defined in § 97.20.

(D) The presence of any noxious weeds; or

(E) Any other public nuisance as defined by this chapter.

(F) Any tree or shrub which has become or threatens to become a hazard so as to adversely affect the public safety, whether such tree or shrub shall be on public or private property.

(G) Any insect and/or pest that threatens the health of the shade trees, including, but not limited to, the Gypsy Moth, Asian Long-horned beetle, and Emerald Ash Borer.

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

§ 97.55 REMOVAL AND ABATEMENT.

(A) *Notice of violation; removal*. It is unlawful for a person to permit a public nuisance to remain on any premises owned or possessed by that person as follows:

(1) A public nuisance as defined in § 97.50. The city may order that the tree, trees, or any part thereof be removed by the property owner or any person who may be in possession or who has the right to possess such property, pursuant to the nuisance abatement procedure herein.

(2) A public nuisance as defined in § 97.50. The city may order that the grass or weeds be cut or removed and the violation be corrected by the property owner or any person who may be in possession or who has the right to possess such property, pursuant to the nuisance abatement procedure herein.

(B) *Abatement procedure*.

(1) *Abatement by city*. If the owner, occupant, or other responsible party does not abate the public nuisance within the time specified by the city, the city may abate or contract the abatement of the public nuisance and recover the costs in accordance with this chapter.

(2) *Notice and Hearing*. Whenever it is determined that a public nuisance is being maintained or exists on a property, the City Manager must give written notice through service by regular or certified mail, by posting a notice on the property, or by personal delivery to the owner of or person in control of the property on which the public nuisance is located. When the property is occupied, service upon the occupant is deemed service upon the owner. Where the property is unoccupied or abandoned, service may be by regular or certified mail to the last known owner of record of the property or by posting on the property. The notice must provide:

(a) A description of the public nuisance;

(b) A public nuisance as defined in § 97.50, grass or weed maintenance and control, must be corrected within seven days of the service of the notice, or

(c) A public nuisance as defined in § 97.50, tree maintenance, must be corrected within 20 days of the service of the notice;

(d) That if the public nuisance is not properly removed or corrected as ordered, the public nuisance will be abated by the city and the costs of abatement will be specially assessed to the property;

(e) That the owner of or person in control of the property on which the public nuisance is located may in writing request a hearing before the City Manager.

(3) *Hearing; action*. If a hearing is requested during either the 7-day or 20-day period as required by the notice, the City Manager must promptly schedule the hearing, and no further action on the abatement of the public nuisance may be taken until a decision is rendered. After the scheduled hearing, the City Manager may cancel the notice to remove or correct the public nuisance, modify the notice, or affirm the notice to remove or correct the public nuisance. If the notice is modified or affirmed, the public nuisance must be disposed of in accordance with the city's written order.

(4) *Summary abatement*. Prior to summary abatement, a reasonable attempt must be made to notify the owner, occupant, or other responsible party of the intended action and the right to appeal the abatement and cost recovery at the next regularly scheduled City Council meeting. The City Manager may provide for abating a public nuisance without following the procedure required in division (B) when:

(a) There is an immediate threat to the public health or safety;

(b) There is an immediate threat of serious property damage; or

(c) A public nuisance has been caused by private parties on public property.

(5) *Cost recovery*. The owner of the property on which a nuisance has been abated by the city, is personally liable to the city for the cost of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, an appropriate official will prepare a bill for the cost and mail it to the owner or other responsible party. The amount is immediately due and payable to the city.

(6) *Assessment*. If the cost, or any portion of it, has not been paid within 30 days after the date of the bill, the council may certify the unpaid cost against the property to which the cost is attributable in accordance with the process set forth in § 94.07 of this Code.

(C) *Penalties*.

(1) Any violation of this chapter is a misdemeanor, punishable in accordance with state law.

(2) Any violation of this chapter may be subject to civil penalties in accordance with Chapter 37 of the city code.

(3) This chapter is not intended to prohibit a private property owner from seeking additional penalties or remedies.

(Ord. 2002-973, passed 5-28-02; Am. Ord. 2014-1170, passed 5-27-14)

CHAPTER 98: GARBAGE AND REFUSE

Section

General Provisions

GENERAL PROVISIONS

§ 98.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word ***MUST*** is always mandatory and not merely directory.

COMMERCIAL ESTABLISHMENT. Any premises where a commercial or industrial enterprise of any kind is carried on and includes clubs, churches and establishments of non-profit organizations where food is prepared and served or goods are sold.

GARBAGE. Animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

INCINERATOR. Any device used for the destruction of refuse, rubbish or waste materials by fire.

LEGAL HOLIDAYS. For the purposes of garbage and recycling collection, legal holidays are defined as New Years Day (January 1), Memorial Day, Independence Day (July 4), Labor Day, Thanksgiving Day, and Christmas Day (December 25).

LICENSED PRIVATE GARBAGE AND REFUSE COLLECTOR. Any person holding a valid license from the city for the collection of garbage and refuse.

OPEN FIRE. Any fire from which the products of combustion are admitted directly into the open atmosphere without passing through an adequate stack, duct or chimney.

RECYCLABLE MATERIALS. The meaning set forth in § 98.30 of this chapter.

REFUSE. Garbage and rubbish.

RESIDENTIAL DWELLING UNIT. Any single building consisting of two or less separate dwelling places with individual dual kitchen facilities for each. It also includes any boarding house in a residential district.

RUBBISH. Inorganic wastes but it does not include recyclable materials, sand, dirt, or yard waste.

YARD WASTE. Organic material consisting of grass clippings, leaves and similar items, but it does not include trees, brush, and similar materials.

('72 Code, § 435:00) (Am. Ord. 1981-356(A), passed 3-23-81; Am. Ord. 1989-633(A), passed 9-25-89; Am. Ord. 2012-1148, passed 9-4-12)

§ 98.02 DISPOSAL OF GARBAGE AND REFUSE.

Every tenant, lessee, owner or occupant of every private dwelling, house, multiple residence, store, motel, restaurant, and every other type of property in the city which accumulates garbage or refuse or both on such premises must have garbage service provided by a licensed hauler. Garbage and refuse at any commercial establishment or multiple dwelling must be disposed of at least once each week and as often as once each business day by a licensed hauler if necessary to protect the public health, safety and general welfare. It is unlawful to accumulate or permit to accumulate any refuse of any property in the city which might constitute a nuisance by reason of appearance, odor, sanitation, possible littering of neighboring properties, littering of the property on which the refuse is accumulated, or a fire hazard. Residents may share garbage service provided it does not create a nuisance. Proof of proper disposal must be provided upon request of the city. Residents who are away from their property for extended periods of time and not accumulating garbage or refuse at that property may suspend or cancel garbage service during that time.

('72 Code, § 435:05) (Am. Ord. 2012-1148, passed 9-4-12) Penalty, see § 98.99

§ 98.03 COLLECTION, SUPERVISION AND CONTROL.

(A) The City Manager or the City Manager's designated representative, must prepare regulations and rules for persons licensed to collect garbage and refuse concerning the days of collection, type and location of waste containers and the responsibilities of collectors licensed pursuant to § 98.06(A) pertaining to the collection, conveyance and disposal of garbage and refuse.

(B) The City Manager must present the proposed regulations to the City Council and the Council will call a public hearing to determine the reasonableness of the proposed regulations. All persons licensed under § 98.06(A) of this chapter at the time of the hearing must be served by certified mail with a notice of the hearing at least ten days prior to the date of the hearing. Any person aggrieved by any proposed regulation of the Manager has the right to present testimony to the Council and the Council may confirm, modify and adopt the proposed regulations. Regulations adopted in this manner are considered a condition to holding a license to collect garbage or refuse in the city and the city may refuse to grant a license or may revoke or suspend any license issued pursuant to § 98.06(A) of this chapter if the licensee fails to comply with the terms of the adopted regulations.

('72 Code, § 435:10) (Am. Ord. 1980-317(A), passed 3-24-80)

§ 98.04 PRE-COLLECTION PRACTICES.

(A) *Yard waste and refuse.* Yard waste and refuse must be placed in containers that have a secure lid and do not exceed 100 gallons in capacity, or in bags or bundles not exceeding three feet in any dimension and not exceeding 60 pounds in weight and securely fastened to avoid spillage. Household appliances, furniture, and similar items need not be so packaged but must not be visible from any street before 3:00 p.m. the day before the scheduled pickup day. The doors of appliances must be properly secured or

removed to prevent potential health and safety hazards. The City Council may authorize the collection of yard waste, recyclable materials, and refuse at the curb on specified days.

(B) *Preparation of garbage and refuse.* Except as otherwise provided in the preceding division, all garbage and refuse as accumulated on any premises must be placed and maintained in containers and must have drained from it all free liquids before being deposited for collection and must be wrapped or bagged. It is unlawful to so deposit explosive or highly inflammable material. Such material must be disposed of as directed by the Fire Chief at the expense of the owner or possessor thereof. It is unlawful to so deposit household appliances, automotive batteries, motor oil, tires, incinerator ash or hazardous wastes.

(C) *Contagious disease refuse.* Refuse such as, but not limited to, bedding, wearing apparel, or utensils from residential dwelling units or other units where highly infectious or contagious diseases are present must not be deposited for regular collection but must be disposed of as directed by the Environmental Health Specialist or health officer at the expense of the owner or the possessor thereof.

(D) *Duty to provide and maintain containers in sanitary condition.* Garbage and refuse containers must be provided by the owner, tenant, lessee, or occupant of the premises located in such a manner so as to prevent them from being overturned. Such containers must be kept in a clean and sanitary condition and kept free from any substance which will attract or breed flies, mosquitos or other insects. A garbage or refuse container must not exceed 32 gallons in capacity or 100 gallons in capacity in the case of roll-cart automated containers or have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof. Containers not complying with the requirements of this chapter must be promptly replaced upon notice as set forth in division (G) below.

(E) *Garbage containers.* Garbage containers must be made of metal, or other suitable material, which is rodent proof, fire resistant, and waterproof and which will not easily corrode and is equipped with suitable handles and tight-fitting covers and must be kept tightly covered when there is garbage therein.

(F) *Refuse containers.* Refuse containers must be of a kind suitable for collection purposes, and must be of such size and weight that they can be handled by one person, and kept tightly covered when there is refuse therein.

(G) *Defective containers.* Whenever a container is in poor repair, is corroded or otherwise defective so as to permit insects, vermin or rodents to enter, or does not meet any other requirements of this chapter, the collector must notify the office of the City Manager in writing on forms furnished by the City Manager's office. The collector must affix a copy of the notice to the container. The notice must state the deficiency and must require repair or replacement on or before the next collection date.

(H) *Dumpsters.* A dumpster is defined as a combination garbage-refuse container and may be used in the multiple, commercial or industrial districts or for an institution's use and which is constructed to be lifted by a mechanical device attached to a garbage-refuse pick-up truck. A dumpster must be made of metal or other suitable material which is rodent-proof, fire resistant or waterproof, and which will not easily corrode and is equipped with suitable handles and tight-fitting covers and must be kept tightly covered when there is garbage-refuse therein.

(I) *Multiple residence units.* Multiple residence units having more than three family units must either be equipped with refuse containers and refuse pickup service as provided in this division or be equipped with a commercial incinerator complying with the requirements of the Minnesota Pollution Control Agency and licensed by the city as provided in this chapter. Refuse containers provided as an alternative to or in addition to such incineration must be at least one cubic yard in capacity, must be conveniently located in relationship to the residence units for which they are provided, must be water-tight and rodent-proof with self-closing lids and must be kept in an enclosed structure concealing them from public view. Refuse, debris, garbage, and other waste materials must not be permitted to be accumulated in or near the enclosing structures (except in the containers). There must be daily clean-up in and around each such enclosing structure.

(J) *Commercial - industrial problem property.* The owner or occupant of any commercial or industrial establishment or any other property which produces a large volume of garbage or refuse or both, which requires garbage and refuse pickup more frequently than once each week, must also comply with the provisions of the foregoing division (I) of this section.

('72 Code, § 435:15) (Am. Ord. 1980-330(A), passed 7-11-80; Am. Ord. 1989-633(A), passed 9-25-89; Am. Ord. 2008-1089, passed 6-23-08) Penalty, see § 98.99

§ 98.05 VEHICLES FOR HAULING GARBAGE AND REFUSE.

All persons hauling or conveying garbage or refuse over the streets of the city will use a vehicle provided with a tight cover and so operated and maintained as to prevent offensive odors escaping therefrom and garbage or refuse from being blown, dropped or spilled from the vehicle. Any such vehicles must be kept clean and as free from offensive odors as possible. Each vehicle must be equipped

with a broom and scoop for use in the immediate removal of spillage. Any vehicle customarily used for such purposes must be kept in a clean and sanitary condition and must be thoroughly disinfected at least once each week unless the same has not been used since the last disinfection thereof.

('72 Code, § 435:25) Penalty, see § 98.99

§ 98.06 LICENSING OF REFUSE AND RECYCLABLE MATERIALS COLLECTORS; FEE.

(A) *Licensing of refuse and recyclable materials collectors.*

(1) It is unlawful for a person to engage in the business of recyclable materials collection or refuse collection in the city unless the person first pays the license fee herein prescribed and secures a license from the city to do so in accordance with the provisions of this section.

(2) Any person desiring a license must make application on a form supplied by the City Clerk or designee. The City Clerk will require on the application such information as may be necessary for the purposes of this chapter.

(3) (a) No license is to be issued until the applicant files with the city a certificate of insurance as proof of coverages which are not less than the following:

1. Bodily injury: $1,000,000 each occurrence; $1,000,000 aggregate.

2. Property damage: $1,000,000 each occurrence; $1,000,000 aggregate.

3. Comprehensive automobile and truck liability:

a. Bodily injury: $1,000,000 each person; $1,000,000 each accident.

b. Property damage: $1,000,000 each accident; $1,000,000 non-owned (to include coverage for all owned, non-owned, leased and hired vehicles).

(b) The certificate of insurance or other form as the city may reasonably require must name the City of Brooklyn Park as an additional insured and state that the contractor's coverage must be the primary coverage in the event of a loss. Further, the certificate must provide for 30 days written notice to the city before cancellation, expiration, or change of coverage. The certificate of insurance cancellation clause must conform to the city's notification requirements.

(4) The license expires on the last day of June each year.

(5) All licensees must be given a copy of any and all regulations adopted pursuant to the provisions of § 98.03 of this chapter and must receipt for those copies. The licensee must agree to comply and abide by the terms of those regulations. Failure to comply may result in suspension or revocation of the license to collect garbage or refuse within the city.

(6) The city reserves the right to limit the number of licenses issued, and in the interest of healthful and sanitary conditions, reserves the right to license operations to designated geographic areas of the city.

(7) Any person desiring a refuse collection license must file with the City Clerk, prior to issuance of the license, a schedule of proposed rates to be charged during the license period. The schedule must include at least two levels of service based on the volume of refuse collected from the applicant's proposed customers. Each refuse collection licensee must notify the City Clerk in writing with any changes in the licensee's schedule of rates charged within 30 days of the effective date of any rate change.

(B) *License fee.* License fees must be in the amount set by the Council from time to time.

('72 Code, §§ 435:30 and 435:40) (Am. Ord. 1980-317(A), passed 3-24-80; Am. Ord. 1984-449(A), passed 4-23-84; Am. Ord. 1989-633(A), passed 9-25-89) Penalty, see § 98.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 98.07 HOURS AND DAYS OF RESIDENTIAL COLLECTION.

(A) It is unlawful for a person engaged in hauling refuse or garbage for hire within the city from residential dwelling units or from commercial or industrial uses where the dumpsters or garbage and refuse containers are within 300 feet of residential dwelling units to do so after 8:30 p.m. or before 6:30 a.m. on any day and all day Sundays and on legal holidays.

(B) *Holiday collection.*

(1) In order to maintain consistent garbage and recycling collection practices, no garbage or recycling collection is allowed on legal holidays. If a legal holiday occurs on a weekday, garbage and recycling collection may not occur on that day and collection on the subsequent days of the week will be one day later than the regular collection schedule. If a legal holiday falls on a weekend day, garbage and recycling collection must be done according to the regular Monday through Friday collection schedule.

('72 Code, § 435:45) (Am. Ord. 1984-470(A), passed 11-13-84; Am. Ord. 2012-1148, passed 9-4-12) Penalty, see § 98.99

§ 98.08 MANDATORY HAULING OF YARD WASTE.

Each refuse collector licensee must on a bi-monthly basis, separately collect and haul away yard waste to an approved recycling or composting site during the period from May 1 through November 30 or as designated by the City Manager or his or her authorized representative and must keep an accurate accounting of the amount of the deposited yard waste. Within 15 days after the expiration of each such period each licensee must submit a written report to the City Manager or the City Manager's authorized representative detailing the amount of such yard waste that has been collected and delivered for composting during each week of such period.

('72 Code, § 435:46) (Ord. 1989-633(A), passed 9-25-89) Penalty, see § 98.99

§ 98.09 SCAVENGERS.

It is unlawful for any person, except a law enforcement officer acting in the course of official business, to scavenge or otherwise collect refuse, recyclable materials or yard waste at the curb or from refuse containers or from recyclable materials containers without a license therefor from the city and an account relationship with the owner or occupant of the premises. Responsibility for and ownership of recyclable materials remains with the individual resident until collected by a licensed hauler of recyclable materials, at which time the ownership and responsibility passes to the hauler.

('72 Code, § 435:47) (Ord. 1989-633(A), passed 9-25-89) Penalty, see § 98.99

§ 98.10 INSPECTION.

Each vehicle for which a license is applied for or which is licensed is subject to inspection by the city at the annual renewal date and at all reasonable times. Any such vehicle, while it is used by the licensee in the city, must have the name of the licensee clearly printed on both sides and the license for the vehicle must be kept in the vehicle at all times while it is being so used. Each licensed vehicle must have attached a decal to be issued by the city showing current registration. The decal must be affixed to the outside of that portion of the truck body used to hold refuse or recyclable materials. Each licensed recyclable material hauler must also provide appropriate container vehicles in good condition.

('72 Code, § 435:50) (Am. Ord. 1989-633(A), passed 9-25-89)

§ 98.11 NO VESTED RIGHT.

No person licensed pursuant to this chapter will gain a vested right in the license. The city may, upon finding that public necessity requires, determine to establish another means of garbage or refuse collection.

('72 Code, § 435:55)

§ 98.12 OBLIGATION OF LICENSED COLLECTORS.

A licensed garbage and refuse collector must pick up any garbage and refuse of the collector's customers which has been deposited

for collection, in the manner provided by this chapter.

('72 Code, § 435:60) Penalty, see § 98.99

§ 98.13 DISPOSAL OF GARBAGE AND REFUSE.

It is unlawful to dispose of garbage or refuse upon any property in the city.

('72 Code, § 435:65) Penalty, see § 98.99

§ 98.14 STORAGE OF REFUSE, RECYCLABLE MATERIALS, AND OTHER WASTE CONTAINERS.

Refuse, yard waste, recyclable materials, and other waste containers, bags, or bundles must not be stored or located within the front yard or any side yard that is adjacent to a street. In addition, all refuse, yard waste, recyclable materials, and other waste containers, bags, or bundles must be fully screened from view from all front and adjacent side streets and from the front yards of adjacent properties. For the purposes of this section, the phrase ***FULLY SCREENED*** means that the containers, bags, or bundles are screened with structurally sound opaque materials, such as a fence or other materials designed for this purpose, which may include architectural features similar to the home. All screening materials must be protected from deterioration. Foliage such as shrubs, bushes, and trees do not meet the definition of ***FULLY SCREENED***. Waste containers must not be placed out for pickup before 3:00 p.m. the day before the scheduled pickup day, must not be placed in the street, and must be returned and placed in a proper location on the same day of collection.

('72 Code, § 435:70) (Am. Ord. 2008-1089, passed 6-23-08; Am. Ord. 2010-1110, passed 1-4-10) Penalty, see § 98.99

§ 98.15 INCINERATORS.

(A) It is unlawful to operate an incinerator within the city for the burning of garbage or refuse unless each incinerator complies with the requirements of the Minnesota Pollution Control Agency. An incinerator, except for an incinerator for a residential dwelling unit, must not be operated within the city unless the operation of the incinerator has been licensed by the city as provided in this section or in other applicable city ordinances.

(B) Applications for an incinerator license must be made to the Clerk. The application must state the name and address of the owner of the property on which the incinerator is located, a description of the type of incinerator, and except in renewal applications, a plan showing that the incinerator will comply with applicable rules and regulations.

(C) The application must be accompanied by the required license fee.

(D) Application for incinerator licenses may be granted by the City Clerk if the City Clerk ascertains that the incinerator meets the requirements of the Minnesota Pollution Control Agency and the ordinances of the city. The City Clerk may, however, refer any such application to the Council. In the event of such referral to the Council the Council may grant or deny the application. It is grounds for denial of the application that the applicant, or other persons occupying the premises at which the incinerator is or would be located, have not complied with regulations of the city relating to health, safety, building or zoning regulations applicable to such incinerator.

(E) The license expires on the last day of December of each year.

('72 Code, § 435:75) Penalty, see § 98.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 98.16 BURNING AND BURNING PERMITS.

It is unlawful to willfully burn or set fire to any grass, weeds or any other natural ground cover, or any building, fixture, or appurtenances of real property unless a permit therefor has been applied for, and approved, in accordance with Article 11 of the Uniform Fire Code as adopted by §§ 93.25 et seq. of this chapter.

('72 Code, § 435:80) (Am. Ord. 1995-784, passed 7-10-95) Penalty, see § 98.99

§ 98.17 DISPOSAL AND DISCHARGE OF PROHIBITED MATERIALS.

(A) It is unlawful to dispose of, within the territorial land or public water limits of the city, any garbage, refuse, rubbish, oils, bilge, sludge, waste, or toxic and hazardous waste except in the manner authorized in this chapter.

(B) It is unlawful to discharge from any source whatsoever such quantities of air contaminants, smoke or other materials which cause injury, detriment, nuisance or annoyance to a considerable number of persons or to the public or which endangers the comfort, repose, health, or safety of any such persons or the public or which causes or has a natural tendency to cause injury or damage to business or property.

('72 Code, § 435:85) Penalty, see § 98.99

RECYCLING

§ 98.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

APPROVED CONTAINER. A container authorized by the City Manager or the City Manager's designee for recycling use.

CAN RECYCLABLES. All disposable containers fabricated of tin, aluminum, or any other metal.

COLLECTION. The aggregation of waste or recyclable materials from the place at which it is generated and includes all activities up to the time when delivered to a facility.

COLLECTOR(S). Any person(s) who owns, operates or leases vehicles for the purposes of collection and transportation of any type of mixed municipal solid waste, recyclables and/or yard waste.

COMPOSTABLE MATERIAL. Organic material consisting of grass clippings, leaves and other forms of organic yard waste.

CORRUGATED RECYCLABLES. Paper products which are manufactured in layered form with a core of ridges.

DEPARTMENT. The City of Brooklyn Park Department of Public Works.

FACILITY. Any resource recovery facility, or related transfer station, or similar facility to which solid waste or recyclable materials are delivered for disposal or processing.

FIXED COSTS OF RECYCLING. The costs of administration of the recycling program, promotion, coordination, billing and provision of containers.

GARBAGE. Animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

GENERATION. The act or process of producing waste (as defined in M.S. § 115A.03, Subd. 11).

GENERATOR. Any person who generates waste (as defined in M.S. § 115A.03, Subd. 12).

GLASS RECYCLABLES. Deemed to include jars, bottles and containers which are transparent or translucent and primarily used for packaging and bottling of various matter.

HAULER. A collector or transporter of mixed municipal solid waste, recyclable materials, and/or yard waste.

MIXED MUNICIPAL SOLID WASTE. Garbage, rubbish, refuse and other solid waste from residential, commercial, industrial and community activities which is generated and collected in aggregate, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires and other materials collected, processed and disposed of as separate waste streams.

MULTI-FAMILY FACILITY. Any building containing more than four dwelling units; but not including rooms in motels, hotels,

nursing homes, or boarding houses.

PAPER RECYCLABLES. Deemed to include paper of the type commonly referred to as newsprint. Expressly excluded, however, are all glossy paper products such as magazines and similar items, and corrugated paper products, and cardboard paper products such as is commonly used for food packaging.

PERSON. Any human being, any municipality or other public agency, any public or private corporation, any partnership, any firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing or any other legal entity.

RECYCLABLE MATERIALS. Materials that are separated from mixed municipal solid waste by the generator and include all items of refuse designated by the Hennepin County Department of Environment and Energy to be part of an authorized recycling program and which are intended for transportation, processing and remanufacturing or reuse.

RECYCLABLE MATERIALS PROCESSING FACILITY. A facility established and used for the receiving, storage, preparing and/or processing of recyclable materials for sale or reuse.

RECYCLING. The process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes.

RESIDENTIAL DWELLING UNIT. Any building or one or more portions thereof occupied or intended to be occupied for residence purposes; but not including rooms in motels, hotels, nursing homes, boarding houses, tents, recreation vehicles and trailers, or buildings containing more than four dwelling units.

SOLID WASTE. Garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.

SOURCE SEPARATION. The separation of recyclable materials and yard wastes from mixed municipal solid waste at the source of generation.

VARIABLE COSTS OF RECYCLING. The costs of collection, processing and marketing of recyclable materials, including, without limitation, compensation paid to any recycling contractor hired by the city.

WASTE TIRE. A pneumatic tire or solid tire for motor vehicles as defined in M.S. 169.01 and included in a Solid Waste Management Plan pursuant to M.S. § 115A.46.

YARD WASTE or ***COMPOSTABLE MATERIAL.*** Organic material consisting of grass clippings, leaves, and other forms of organic garden waste.

('72 Code, § 437:00) (Ord. 1989-634(A), passed 9-25-89)

§ 98.31 PRE-COLLECTION AND COLLECTION.

(A) *Pre-collection.*

(1) All persons, who are owners, lessees, and occupants of any building, commercial or residential, within the City of Brooklyn Park, which generates mixed municipal solid waste, must separate from all solid waste the recyclable materials and yard waste before disposal, removal or collection as follows:

(a) Paper recyclables, must be separated, placed in non-plastic bags or approved containers, in such a manner as to prevent them from being blown or scattered, and must be maintained free of any other substance.

(b) Glass recyclables must be separated, clean of all contents, covers must be removed, and such recyclables must be placed in non-plastic bags or approved containers.

(c) Can recyclables must be separated, clean of all contents, paper labels must be removed, and such recyclables must be

placed in non-plastic bags or approved containers.

(d) Yard waste and compostable materials must be placed in bags or approved containers.

(e) Corrugated recyclables must be separated, baled or flattened and containerized or securely tied and bundled.

(2) All paper recyclables, glass recyclables, can recyclables and compostable materials must be placed in separate non-plastic bags or approved containers and not mixed with other forms of solid waste or mixed municipal solid waste, all in a manner consistent with the rules, regulations and procedures adopted by the city.

(B) *Container and storage requirements.*

(1) All persons who are owners, lessees, or occupants of any building, commercial or residential must either utilize containers provided by the city for recyclable materials, or must provide their own approved containers for recyclable materials, and all containers for recyclable materials must be:

(a) Maintained in a clean and sanitary condition in accordance with all pertinent health statutes, ordinances, rules and regulations;

(b) Located in such a manner so as to prevent them from being overturned or obstructing pedestrian or motor vehicle traffic or being in violation of any statute, ordinance, rule or regulations; and

(c) Adequate and substantial enough to contain the recyclable materials.

(2) Collections of recyclable materials must be of sufficient frequency as to avoid unsightliness, odor, insect infestations, vermin infestations, and any other public health or public safety hazards.

(C) *Collection and separation.* The collection, removal and processing of recyclable materials must be supervised by the city, which has the power to establish, by resolution, the time, method and routes of service. Special times for special collection projects may also be designated. Collection provisions include the following:

(1) Notice of dates and times of collection will be published or otherwise made available to persons affected herein.

(2) The Department may establish drop-off or collection sites where any person may deposit recyclable materials and/or yard waste at such times and locations as determined.

(3) It is unlawful for any person other than employees of the Department, or authorized persons, licensed collectors or haulers to collect, remove or dispose of recyclable materials after the materials and/or yard waste have been placed or deposited for collection.

(4) Nothing in this subchapter abridges the right of any person to give or sell their recyclable materials and/or yard waste to any recycling and composting program lawfully operated for profit, non-profit or charitable purposes.

(5) Nothing in this subchapter abridges the right of any authorized recycling or composting program to lawfully operate within Hennepin County, subject to such other licenses or other regulations as may be required by law.

(6) It is unlawful for a person to collect, remove or dispose of mixed municipal solid waste which consists of recyclable materials and/or yard waste combined with other forms of mixed municipal solid waste.

(D) *Yard waste.* Yard wastes must be kept on site separate from recyclable materials and from refuse as defined in § 98.01 of this chapter. If yard wastes are kept on site, yard wastes must be composted or stored in an acceptable manner so as to not create an unreasonable odor or other condition that is obtrusive or annoying to others. If yard wastes are removed from the site, they must be taken in a sanitary manner to an approved yard waste recycling or composting site or removed by a licensed hauler by placing the material in bags or approved containers and set out for collection at the time and location prescribed by a licensed hauler. Non-compostable tree branches or brush must be cut and tied into bundles not exceeding three feet in any dimension or 60 pounds in weight: such bundles must be disposed of as refuse as provided in § 98.02 of this chapter.

(E) *Exception.* Nothing in this section prevents persons from hauling recyclable materials from their own residences or business properties provided the following rules are observed:

(1) That all recyclable materials are hauled in vehicles with leak-proof bodies and completely covered or enclosed by canvas or other means or material so as to completely eliminate the possibility of loss of cargo.

(2) That recyclable materials may be disposed of at a recycling facility, an organized recyclable drive or through a licensed recyclable materials hauler.

(3) Recyclable materials must be stored so as to be out of the public view insofar as possible.

('72 Code, § 437:05) (Ord. 1989-634(A), passed 9-25-89) Penalty, see § 98.99

§ 98.32 LICENSING OF COLLECTORS AND HAULERS OF RECYCLABLE MATERIALS.

Recyclable materials hauler licenses are granted only upon the condition that the licensed hauler have appropriate container vehicles in good condition to prevent loss in transit of liquid or solid cargo, that the vehicle be kept as clean and free from offensive odors as possible and not allowed to stand in any street longer than reasonably necessary to collect recyclables (see § 98.06 for other requirements).

('72 Code, § 437:10) (Ord. 1989-634(A), passed 9-25-89) Penalty, see § 98.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 98.33 REGULATIONS FOR SUPERVISION AND CONTROL OF RECYCLING.

(A) The City Manager or designated representative, must prepare regulations and rules for collectors and haulers concerning days and hours of collection, type and location of containers for recyclable materials, and the responsibilities of collectors and haulers licensed pursuant to § 98.06 pertaining to the collection, conveyance, and disposal of recyclable materials.

(B) The City Manager must present the proposed regulations to the City Council and the Council must call a public hearing to determine the reasonableness of the proposed regulation. All persons licensed under § 98.06 as haulers or collectors of recyclable materials must be served by certified mail with a notice of the hearing at least ten days prior to the date of the hearing. Any person aggrieved by any proposed regulation of the Manager has the right to present testimony to the Council and the Council may confirm, modify, and adopt the proposed regulations. Regulations adopted in this manner are considered a condition to holding a license to collect recyclable materials in the city and the city may refuse to grant a license or may revoke or suspend any license issued pursuant to § 98.06 of the city code if the licensee fails to comply with the terms of the adopted regulations.

('72 Code, § 437:15) (Ord. 1989-634(A), passed 9-25-89)

§ 98.34 CITATIONS.

The Department or any of its duly authorized representatives have the power to issue citations for violations of this subchapter, but this does not permit such representatives to physically arrest or take into custody any violator except on warrant duly issued.

(A) *Form of citations.* Citations must contain at least the following:

(1) The name and address of the person charged with the violation or the owner or person in charge of the premises at which the violation occurs.

(2) The date and place of the violation.

(3) A short description of the violation followed by the section of this subchapter violated.

(4) The date and place at which the person receiving the citation must appear and a notice that if the person does not respond, a warrant may be issued for the person's arrest.

(5) The name of the person issuing the citation.

(6) Other information as the court may specify.

(B) *Issuance of citations.* Whenever any representative of the Department discovers any violation of this subchapter, the representative may issue a citation to the person alleged to have committed the violation and the citation must be in the form specified in division (A) of this section. A copy of such citation must be issued to the person alleged to have committed the violation.

(C) *Issuance.* The citation must be issued to the person charged with the violation or in the case of a corporation or municipality,

to any officer or agent, expressly or implicitly authorized to accept such issuance.

(D) *Criminal complaint.* In lieu of a citation the city may proceed at any time by formal criminal complaint issued against any person who fails to comply with this subchapter.

('72 Code, § 437:20(2)) (Ord. 1989-634(A), passed 9-25-89)

§ 98.35 REMEDIES CUMULATIVE.

No remedy set forth in this subchapter for violation of this subchapter is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and is in addition to every other remedy given under the city code or now or hereafter existing at law or in equity or by statute. No delay in the exercise of any remedy for any violation of this subchapter shall later impair or waive any such right or power of the city.

('72 Code, § 437:20(4)) (Ord. 1989-634(A), passed 9-25-89)

§ 98.36 INJUNCTIVE RELIEF.

In the event of a violation or a threat of violation of this subchapter, the city may institute appropriate actions or proceedings including application for injunctive relief, action to compel performance or other appropriate action to prevent, restrain, correct or abate such violations or threatened violations.

('72 Code, § 437:20(5)) (Ord. 1989-634(A), passed 9-25-89)

§ 98.37 COSTS AND SPECIAL ASSESSMENTS.

If a hauler or any person within the city collects or disposes of recyclables in violation of this subchapter, the city may take the necessary steps to correct such violations and the costs thereof may be recovered in a civil action in any court of competent jurisdiction or, at the discretion of the City Council, the costs may be certified to the County Auditor as a special assessment against the real property owned by the hauler or person.

('72 Code, § 437:20(6)) (Ord. 1989-634(A), passed 9-25-89)

§ 98.38 ESTABLISHMENT OF RECYCLING UTILITY.

Pursuant to Chapter 13 of the City Charter and M.S. Chapter 429, the city hereby establishes a recycling utility and authorizes the imposition of just and reasonable charges for the use and availability of recycling to residential dwelling units and to multi-family facilities.

('72 Code, § 437:25) (Ord. 1989-634(A), passed 9-25-89)

§ 98.39 RATES AND CHARGES.

(A) *Findings and determination.*

(1) In the exercise of its governmental authority and in order to promote the public health, safety, convenience and general welfare, the city will facilitate the collection, processing and recycling of recyclable materials in accordance with this subchapter of the city code.

(2) It is necessary and desirable to provide a method of recovering the costs of operating the recycling service through the imposition of charges as provided in this subchapter. In imposing charges, it is necessary to establish a methodology that undertakes to make them just and equitable. Taking into account that recycling costs include fixed and variable costs and that variable costs will be a function of waste generation volume and the number of recycling stops in the city, it is determined that it would be just and equitable to apportion charges for some or all of the costs of starting, operating, maintaining and improving the recycling service according to the structure of fixed and variable costs.

(B) *Charges.* The charge to a multiple-family is 100% of the fixed costs and 100% of the variable costs of providing recycling; and residential dwelling units are charged 100% of the fixed costs and 100% of the variable costs for recycling. Recycling rates charges for each quarter are established by the fee resolution set forth in the Appendix to this code.

(C) *Public hearing and notice.* The city must hold a hearing prior to adopting a resolution establishing charges for recycling services. Notice of such hearing must be published in the official city newspaper at least ten days prior to the date of hearing. Additional notice of such public hearings must be mailed to subscribers or given in such manner as the City Council may determine. The failure to give mailed notice or any defects in the notice does not invalidate the proceedings. Additional notice of such public hearings must be mailed to subscribers or given in such manner as the City Council may determine.

(D) *Payment of charges.* Recycling bills will be placed on the utility accounts of all property and are payable in the manner established for all utilities.

(E) *Establishment of tax lien.* Any recycling service charges in excess of 90 days past due on October 1 of any year may be certified to the County Auditor for collection with real estate taxes as a special assessment. An administrative charge of $25 will be added to each recycling service charge so certified. In addition, the city has the right to bring a civil action or to take other legal remedies to collect unpaid charges.

(F) *Recalculation of charges.* If an owner or person responsible for paying the recycling charge questions the correctness of such a charge, the person may have the determination of the charge reviewed by written request to the Director of Public Works. The request must be made within 30 days of the mailing of the bill in question. The Director of Public Works or the Director's designate has the authority to recompute the charge.

(G) *Appeal.* The owner or person responsible for paying the recycling charge has the right to appeal the decision of the Director of Public Works or the Director's designate to the City Council. An appeal must be made within ten days after notification of such decision. The Council must either affirm, modify or overrule the decision and must state the reasons for such action.

(H) *Charge for replacement of containers.* The city may supply containers to certain residential dwelling units or multi-family facilities for use in separating recyclable materials. Any such containers are and remain the property of the city. The city must replace such containers when rendered unserviceable through ordinary wear and tear. When replacement is necessary due to other causes, the owner or occupant may be charged the cost of such container together with the administrative and delivery costs incurred by the city.

('72 Code, §§ 437:30 - 437:65) (Ord. 1989-634(A), passed 9-25- 89)

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 98.99 PENALTY.

(A) Any person who violates any provision of this chapter for which no penalty is otherwise provided shall be subject to the penalty provided in § 10.99.

(B) (1) *Civil penalty.* A violation of any provision of §§ 98.30 et seq. shall result in a $25 penalty for each owner or occupant of a single-family dwelling and two-family dwelling and a $100 penalty for each owner of a multiple-family dwelling, commercial, industrial or institutional property. A violator shall be given a written warning for the initial violation. A civil penalty shall be imposed for each subsequent violation. Penalties that remain unpaid for more than 30 days shall be charged to the utility account of the violator. Any penalty that is placed on a utility account may be an assessment against the violator's property. Such amount shall be certified to the County Auditor and collected in the same manner as taxes and/or special assessments against the premises and may be subject to a civil action initiated by the city.

(2) *Misdemeanor.* Any person who fails to comply with the provisions of §§ 98.30 et seq. may be charged with a violation not exceeding a misdemeanor and upon conviction shall be punished as provided in § 10.99 of this code. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

('72 Code, § 437:20(1),(3)) (Ord. 1989-634(A), passed 9-25-89)

Section

General Provisions

Connections and Permits

Rules and Regulations

Sewer Installers

Cross-reference:

Private sewer and water systems, see §§ 101.01 et seq.

GENERAL PROVISIONS

§ 99.01 TITLE.

This chapter comprises and is referred to hereinafter as the "sewer code."

('72 Code, § 600:00) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.02 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms in the sewer code is in accordance with the Minnesota State Building Code, Chapter 4715, Plumbing Code, the Waste Discharge Rules for the Metropolitan Disposal System (MDS), and as set forth as follows:

INDIVIDUAL SEWAGE DISPOSAL SYSTEM. An individual sewage disposal or treatment system other than a public sewer system, and which receives sewage from an individual establishment.

NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

PERSON. Any individual, firm, company, association, society, corporation or group.

PUBLIC SEWER. A sanitary sewer in which all owners of abutting properties have equal rights and is controlled by a public authority.

('72 Code, § 600:05) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.03 DAMAGE.

It is unlawful for an unauthorized person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage works. Any person violating this provision is guilty of a penal offense.

('72 Code, § 600:10) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.04 INSPECTION.

(A) The City Building Official, and other duly authorized employees of the city bearing proper credentials and identification are permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of the sewer code.

(B) Every person owning improved real estate that discharges into the city's sanitary sewer system must allow an employee of the city or the city's designated representative to inspect the buildings to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. In lieu of having the city inspect their property, any person may furnish a certificate from a licensed plumber certifying that their property is in compliance with this section.

(C) Any person refusing to allow their property to be inspected or refusing to furnish a plumber's certificate within 14 days of the date city employees or the city's designated representatives are denied admittance to the property, immediately becomes subject to the surcharge hereinafter provided for. Any property owner found to violate this section must make the necessary changes to comply with this section and furnish proof of the changes to the city.

(D) All new homes are required to have a sump pump basket and drain tile and be required to have their sump pump system inspected at final inspection for certificate of occupancy and a certificate of compliance completed.

(E) Each sump pump or other clear water conveyance device connection identified will be reinspected on a yearly basis in conjunction with a yearly water meter inspection. The city reserves the right to reinspect all properties within the city for code violations.

('72 Code, § 600:15) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.05 LIABILITY.

Any person violating any of the provisions of the sewer code becomes liable to the city for any expense, loss, or damage occasioned the city by reason of such violation, including attorney's fees.

('72 Code, § 600:25) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.06 PUBLIC SEWER SERVICE CONNECTION.

(A) *Connection required.* Connection to the public sewer system is required in accordance with the provisions of the Minnesota State Building Code, Chapter 4715, Minnesota Plumbing Code, and the ordinances of the City of Brooklyn Park.

(B) *Private sewage treatment system repair.* At such time as a public sewer becomes available to a property served by a private sewage treatment system, and the private system cannot be repaired or reconstructed as provided in Chapter 101 of this title, a direct connection must be made to the public sewer in compliance with this section, and any septic tanks, cesspools and similar private sewage disposal facilities must be abandoned and removed or filled with suitable material. No individual sewage treatment of disposal system is permitted to discharge into any public sewer or natural outlet.

(C) *Separate public sewer service connections required.*

(1) All connections must be made in accordance with the provisions of the Minnesota State Building Code, Chapter 4715, Minnesota Plumbing Code, and Rule 4715.0310 thereof. A separate and independently connected building sewer must be provided for each property and for each unit contained within a structure; i.e., a duplex must have two services from the public sewer main to the building. Exceptions to this provision may be allowed subject to the approval of the Building Official.

(2) Where one building stands at the rear of another on an interior lot and no public sewer service connection can be constructed to the rear building through an adjoining alley, court, yard or driveway, the sewer service connection from the front building may be extended to the rear building and the whole considered as one sewer service connection except for rate purposes.

(3) Connection of more than one property to a sewer service extension of the public sewer that is intended for a single service connection, is subject to the approval of the Building Official. Such a connection must be made through a manhole constructed at the connection. The manhole, when required, must be located at the public utility easement, right-of-way, or sewer service extension from the public sewer, must be accessibly and safely located, and must be constructed in accordance with plans approved by the Building Official. The manhole must be installed by the owner at the owner's expense, will become the property of the city and maintained by the city so as to be safe and accessible at all times.

('72 Code, § 605:20) (Am. Ord. 1988-587(A), passed 1-25-88; Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.07 PROHIBITING DISCHARGES INTO THE SANITARY SEWER SYSTEM.

(A) Water from any roof, surface, ground water sump pump, footing tile, swimming pool, or other natural precipitation must not be discharged into the sanitary sewer system. Dwellings and other buildings and structures which require, because of infiltration or water into basements, crawl spaces, and the like, a sump pump discharge system or other device intended to convey clear water must have a permanently installed discharge line which must not at any time discharge water into a sanitary sewer system. A permanent installation is one which provides for year round discharge capability to either the outside of the dwelling, building, or structure, or is connected to the city storm sewer or discharges through the curb and gutter to the street. It consists of a rigid discharge line without valving or quick connections for altering the path of discharge, and if connected to the city storm sewer line, include a check valve and an air gap located in a small diameter structure as shown in the city's standard plates.

(B) Before February 1,1999, any person having a roof, surface, ground water sump pump, footing tile or swimming pool now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by designated city employee(s) or the city's designated representative.

(Ord. 1998-890, passed 12-14-98)

CONNECTIONS AND PERMITS

§ 99.15 CONNECTION CHARGE REQUIRED.

(A) *Connection charges.* It is unlawful to make or cause to be made, any connection to the Brooklyn Park municipal sewer system, unless the person has first paid to the city a connection charge in amounts set by the City Council.

(B) *Special assessments.* In addition, no permit may be issued to tap or connect with any public sewer system main, either directly or indirectly, from any lot or tract of land, unless:

(1) The property has been specially assessed for the public sewer system, or equivalent sums have been paid to the city for the cost of construction and maintenance of the public sewer system to which the connection is made; or

(2) If no assessment has been levied for such construction costs, that proceedings for levying such assessment have been or will be commenced in due course; or

(3) That the cost of construction for the public sewer system has been paid by the developer or builder platting the lot or tract of land; this does not include lots or tracts of land served by the public sewer system and which were not a part of the plat or tract developed; or

(4) If no assessment has been levied, and no assessment proceedings will be completed in due course, and the developer or builder of the lot or tract has not paid the cost of improving the lot or tract of land, that the developer or builder develops must pay a sum equal to the portion of the cost of constructing the public sewer system which would be assessable against the lot or tract of land has been paid to the City of Brooklyn Park.

(C) *Tax forfeited land - special assessments and reassessment.* When a parcel of tax forfeited land is returned to private ownership and the parcel is benefitted by sanitary sewer or any other improvement for which special assessments were canceled because of the forfeiture, the city may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to the parcel in an amount equal to the amount remaining unpaid on the original assessment plus interest; or the city may impose fees or charges for the use or availability or the improvement or improvements or for connections therewith in an amount not to exceed the amount remaining unpaid on the canceled assessment.

(D) *Special connection charge.* If such special assessments have not been paid, no such permit to connect to the public sewer system will be issued, unless the applicant pays an additional connection fee which will be equal to the portion of the cost of construction of the public sewer system which would be assessable against the lot or tract to be served by the connection. The assessable cost is to be determined by the City Engineer, upon the same basis per front foot or lot unit as any assessment previously levied against other property for the public sewer system, or if no such assessment has been levied, upon the basis of the uniform charge per front foot or lot unit which may have been or which will be charged for similar connections with the public sewer system, determined on the basis of the total assessable cost of the main allocated on a frontage or lot unit basis.

('72 Code, § 610:00) (Am. Ord. 1978-262(A), passed 4-24-78; Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.16 PERMIT APPLICATION.

Permits for building sewers and connections will be granted to only plumbers licensed by the State of Minnesota.

(A) Application for public sewer service connection must be made on printed forms, must state the legal description, street and official house numbers of the premises to be connected, and the nature of the improvement to be done. A permit and inspection fee in the amount set by the City Council is payable to the city at the time the application is filed.

(B) The charges for connection to public sewer must be paid at the time the application is submitted and before the service is connected.

(C) No person except a plumber or certified pipe layer duly licensed by the State of Minnesota or a duly authorized employee of the city will be permitted to do any work on connections to the public sewer system.

(D) The sewer service extension from the public sewer system main to the public utility easement, or right-of-way is the property of the city and all persons are forbidden to interfere with such extension.

(E) The charges for tapping public sewer mains must be paid at the time the application is submitted and before the service is installed.

('72 Code, § 610:15) (Am. Ord. 1978-262(A), passed 4-24-78; Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.17 COSTS.

All costs and expense incidental to the installation and connection of the building sewer to the public sewer system will be borne by the property owner. The property owner must indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

('72 Code, § 610:30) (Am. Ord. 1978-262(A), passed 4-24-78; Am. Ord. 1995-779, passed 4-24-95)

RULES AND REGULATIONS

§ 99.30 PROHIBITED WASTE WATER DISCHARGE.

(A) *Storm water discharge.*

(1) It is unlawful to discharge or cause to be discharged any storm water, surface water, ground water, roof drainage, runoff, or sub-surface drainage to any sanitary sewer. Storm water and all other such unpolluted drainage must be discharged to such drains as are specifically designed as storm sewers, or to a natural outlet approved by the City Engineer. Potable clear water wastes may be discharged, upon approval of the City Engineer, to a storm sewer, or natural outlet. The use of dry wells for the purpose of storm water disposal is prohibited. Any such unauthorized discharge to the sanitary sewer system is considered a penal offense.

(2) In addition to the penalties and surcharges for such penal offenses, the city has the right to make any disconnections or repairs necessary to cease the prohibited use of the city sanitary sewer system; to receive the actual costs for disconnections and repairs made from the property owner; and to recover the actual costs of the sanitary sewer treatment and conveyance from the property owner as estimated and determined by the City Manager or the City Manager's designee.

(B) *Specific waters prohibited.* It is unlawful to discharge or cause to be discharged to any public sewer, any waters or wastes prohibited by the Minnesota State Building Code, Chapter 4715, Minnesota Plumbing Code; or by the Waste Discharge Rules for the Metropolitan Council Environmental Services and promulgated by the Metropolitan Council Environmental Services pursuant to M.S. Chapter 473, and under the control of Metropolitan Council Environmental Services, effective July 1, 1994.

(C) *Storm drains.* It is unlawful for a person to permit any sewage to flow into any public storm drain from any premises owned by that person or under the person's control.

('72 Code, § 615:00) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 99.99

§ 99.31 CONTROL MANHOLE.

The owner of any property served by a building sewer carrying industrial wastes as defined in the Waste Discharge Rules for the Metropolitan Council Environmental Services (MCES), must install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. The manhole, when required, must be accessibly and safely located, and must be constructed in accordance with plans approved by the City Engineer. The manhole must be installed by the owner at the owner's expense, and must be maintained by the owner so as to be safe and accessible at all times.

('72 Code, § 615:33) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.32 STANDARDS.

All measurement tests and analyses of the characteristics of water and wastes regulated by MCES, Waste Discharge Rules to which reference is made in § 99.30(B), must be determined in accordance with EPA approved methods as specified by 40 C.F.R. Part 136, and must be determined at the control manhole provided for in § 99.31, or upon representative samples taken at the control manhole. In the event that no special manhole has been required, the control manhole is considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

('72 Code, § 615:36) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.33 RATES AND CHARGES.

Rates and charges for use and service of the sanitary sewer system are as set by the City Council and §§ 99.75 et seq. of this chapter.

('72 Code, § 615:42) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.34 REVENUES.

All revenues derived from these rates and charges are to be credited to the Public Utilities Revenue Accounts. Such revenue may be used only for the purpose of paying the cost of operating and maintaining the public sewer system and the water supply system, paying charges made by Metropolitan Council Environmental Services, providing an adequate depreciation fund, paying costs of meter-reading, billing, collection, and other similar or related sewer operating expenses, provided that any surplus above such needs may be

transferred to the general funds.

('72 Code, § 615:44) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.35 INDUSTRIAL USER STRENGTH CHARGE.

(A) *Recitals.* Metropolitan Council Environmental Services has been organized and existing under the laws of the State of Minnesota, and has determined to impose an industrial user sewer strength charge upon users of the Metropolitan Disposal System (as defined in M.S. Chapter 473) to recover operational costs of treatment works attributable to the strength of the discharge of industrial waste, such sewer strength charge being in addition to the base sewer volume charge.

(B) *Administration and enforcement.* Administration and enforcement of federal and state laws pertaining to industrial user strength charges and the discharge of industrial wastes is by Metropolitan Council Environmental Services.

('72 Code, § 615:46) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.36 METERING; INSTALLATION; EXTRA SUPPLYING.

(A) *Metering.* A meter recording the use of water may be installed on any non-residential lot, parcel or premises and thereafter the rate must be based upon such use of water. The City Manager or the City Manager's designee may require and order the installation of such meter on any such lot, parcel or premises where it determines that flat charges are impractical to apply, or result in inequitable charges because insufficient or excessive; and thereafter the rate will be based upon such use of water.

(B) *Meter installation.* Any water meter installed for use or used as a basis for the computation of sewer rates must be installed and maintained in good operating condition at all times, such installation and maintenance to be without expense to the city. Any such meter must be of a type obtained from the city, and must accurately measure all water received on the premises. Installation of and maintenance of such meter must be made in accordance with plumbing regulations of this city.

(C) *Extra meter supplying.* If the lot, parcel of land, or premises discharge normal sewage or industrial waste into the sanitary sewerage system, either directly or indirectly, and it can be shown to the satisfaction of the Council that a portion of the water measured by the water meter does not and cannot enter the sanitary sewerage system, then, and in that event, the Council may permit or require the installation of other or additional meters in such manner that the quantity of water which actually could enter the sewer system may be determined. In such case the charges or rates will be based upon the amount of water which can enter the sanitary sewerage system.

('72 Code, §§ 615:48 - 615:54) (Am. Ord. 1995-774, passed 2-13- 95; Am. Ord. 1995-779, passed 4-24-95)

§ 99.37 INFORMATION.

The owner, occupant, or person in charge of any premises must supply the city with such information as the city may reasonably require related to use of water, use of sewer, or sewer rates. Wilful failure to provide such information or wilful falsification of such information constitutes a violation of this chapter, as does wilful failure to comply with any requirement or order issued pursuant to this chapter.

('72 Code, § 615:57) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.38 ESTIMATED BILLS.

If the owner, occupant or person in charge of any premises fails to provide information as provided in § 99.37 hereof, or fails or refuses to comply with any requirement of this chapter, the proper charge for such premises will be estimated and billed in accordance with such estimate.

('72 Code, § 615:60) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.39 BEGINNING SERVICE.

For a fraction of a quarter the charges and rates for non-metered units will be based upon the amount of the established flat charge, provided, however, that the actual month of beginning will be considered as having begun on the first or fifteenth of the month, whichever is closer.

('72 Code, § 615:63) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.40 BILLING.

Bills for charges for the use and service of the sewerage system will be made out by the city in accordance with the usual and customary practice. All bills are payable to the City of Brooklyn Park and are rendered quarterly.

('72 Code, § 615:66) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.41 UNAUTHORIZED USE OF PUBLIC SEWER PROHIBITED.

(A) It is unlawful to make a connection to the public sewer system without first obtaining permits required by the city. It is unlawful to discharge into the public sewer any wastes prohibited by this chapter. Any such unauthorized connection or use of the public sewer system is considered a penal offense.

(B) In addition to penalties for such penal offense, the city has the right to make any disconnections or repairs necessary to cease the unauthorized use of the public sewer system, and to recover the actual costs for the disconnections and repairs made as determined by the City Manager or the City Manager's designee.

('72 Code, § 615:77) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 99.99

§ 99.42 BUILDING SEWER.

The building sewer and connections thereto extending from the building or structure to the service extension of the public sewer at the public utility easement or right-of-way are the property of the applicant and must be protected and maintained by the applicant. In the event the applicant or any consumer fails to make any necessary repairs to the pipes within 24 hours after being notified to do so by a person designated by the City Manager, this person designated by the City Manager must make such repairs and the cost thereof will be charged to the owner of the premises or the consumer and must be collected in the same manner as other bills for sewer services are collected.

('72 Code, § 615:80) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 99.99

§ 99.43 LOCATING PUBLIC SEWER CONNECTION.

The plumber must assist the person designated by the City Manager in making any measurements necessary in locating the public sewer connection.

('72 Code, § 615:85) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.44 EXCAVATIONS.

All excavations and backfilling of excavations made within a public easement or public right-of-way must be made in accordance with Chapter 96 of this code. All excavations and backfilling of excavations on private properties within the city must be made in accordance with the State Building Code.

('72 Code, § 615:90) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 99.99

§ 99.45 CONTRACTS.

All contracts made under the provisions of this chapter must be made by the city with the owner of the property to be served, or the owner's duly appointed agent or attorney, and the owner of the property is liable to the city for all rents accruing through the use of the public sewer upon the owner's premises whether the same be personally used by the owner or the owner's renter or lessees or other occupants of the premises.

('72 Code, § 615:95) (Am. Ord. 1995-779, passed 4-24-95)

§ 99.46 OWNER RESPONSIBILITY.

Each owner of premises desiring the use of the public sewer system thereon must file with the city the name of the owner's agent, if the owner desires to act through an agent, or the owner's address, and must direct in the instrument the one to whom the bill is to be sent, and notices be given, and the same is binding until a further notice differing therefrom is made in writing and filed with the city. The contract made with the owner must provide that any delinquencies in the payment of the public sewer service provided on the premises are a lien and charge against the premises so served regardless of whether the same is a homestead or not. The lien, in case of a delinquency, must be reported to the County Auditor by the city at the same time and in the same manner as special assessments on real estate for street improvements, and must be collected in the same manner as taxes against real estate provided, however, that nothing in this section is intended to prevent the city from cutting off sewer service to premises for delinquent payments in accordance with other provisions of this code, city policies, or other applicable state or federal laws.

('72 Code, § 616:00) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07)

§ 99.47 DISCONTINUE PUBLIC SEWER SERVICE.

Any person desiring to discontinue the use of the public sewer must notify the city. No person other than a plumber duly licensed by the State of Minnesota or a duly authorized employee of the city will be permitted to make disconnections from the public sewer system. The public sewer service extension will be disconnected, capped and abandoned in a manner approved by the Building Official or other designated city employee(s).

('72 Code, § 616:05) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.48 CLAIMS.

No claim is to be made against the city for reason of the breaking of any public sewer main or building sewer pipe or for any other interruption of the public sewer service, by reason of the breaking of machinery or stoppage for necessary repair.

('72 Code, § 616:10) (Am. Ord. 1995-779, passed 4-24-95)

SEWER INSTALLERS

§ 99.60 LICENSE REQUIRED.

It is unlawful to engage in the business of installing, repairing, pumping or performing percolation rate tests and soil evaluations for on-site sewage treatment systems within Brooklyn Park, without first obtaining a license to carry on such operation. Persons applying for the issuance of a license are required to show evidence of their competency. Such competency may be demonstrated by evidence of certification from the Minnesota Pollution Control Agency or other evidence acceptable to the City Health Authority.

('72 Code, § 470:00) (Am. Ord. 1984-474(A), passed 12-17-84) Penalty, see § 99.99

Cross-reference:

Licensing and permit regulations; fees, revocation, and the like, see Ch. 110

§ 99.61 APPLICATION.

Application for a license must be made annually on a form furnished by the Clerk. The form must contain information as determined to be necessary by the City's Health Authority.

('72 Code, § 470:05) (Am. Ord. 1984-474(A), passed 12-17-84)

§ 99.62 BOND.

Applicants must procure and post with the City Clerk at the time of application a bond in the amount of $2,000 in favor of the municipality and the public, conditioned upon the faithful performance of contracts and compliance with this chapter.

('72 Code, § 470:10)

§ 99.63 INSURANCE.

The licensee must also file with the City Clerk a certificate showing liability insurance coverage with a company doing business in Minnesota; liability insurance coverage for sewer installers is required in the amounts of $50,000 for property damage and $200,000/$600,000 for bodily injury.

('72 Code, § 470:15) (Am. Ord. 1984-474(A), passed 12-17-84)

§ 99.64 RENEWAL.

The license is renewable annually on or before January 1.

('72 Code, § 470:20)

§ 99.65 REFUSAL TO RENEW AND REVOCATION.

Any such license may be revoked or refused by the Clerk for cause. Any installation, repair, pumping, percolation rate test or soil evaluation on or for construction for an on-site sewage treatment system by a licensee in violation of the provisions of this chapter or refusal on the part of a licensee to correct such defective work performed by such licensee, is cause for revocation of or refusal to renew a license. Persons licensed under this chapter must inform the Health Authority of the location and date of service when they pump septic tanks. If the City Clerk refuses to issue a license or to renew a license or revokes a license, the applicant or licensee has a right to appeal to the City Council.

('72 Code, § 470:25) (Am. Ord. 1984-474(A), passed 12-17-84)

§ 99.66 FEE.

The annual license fee is in the amount set by the Council from time to time and as contained in §§ 99.81 and 99.82 of this chapter.

('72 Code, § 470:30) (Am. Ord. 1986-540(A), passed - -)

RATES AND CHARGES

§ 99.75 RATES AND CHARGES ESTABLISHED.

(A) Rates and charges for use and service of the city sanitary sewer system are established. Such charges and rates to be made against each lot, parcel of land, unit or premises which may have connection directly or indirectly into the city sanitary sewer system and which discharges only normal sewage into such system.

(B) Effective on the first day of February 1999 and on the first day of each calendar year thereafter for all sewage produced in the billing quarter by city sanitary sewer system users, sanitary sewer charges for each quarter year are established by the resolution establishing fees and charges as set forth in the Appendix to this code.

(C) *Basis of rates and charges.*

(1) The residential rates established are to provide sanitary sewer charges based on a service charge plus a usage charge based on the amount of water metered during the winter quarter or actual use if less. Customers may at their written direction be allowed to use the water meter readings for each quarter as a basis for calculating usage.

(2) All metered residential units (residential means single-family, two-family, townhouses or any complex of housing units which have individual sewer and water connections for each unit) include a service charge per quarter plus the usage to the nearest measured unit times the usage charge rate. Non-metered residential units are charged a flat service charge per quarter.

(3) Multi-family, industrial, commercial and institutional charges are based on the water meter reading for each quarter.

(4) All metered commercial, multi-family, industrial and institutional units are the service charge per quarter times the meter equivalent plus the usage to the nearest measured unit times the usage charge rate. Non-metered multi-family, commercial, institutional and industrial units are charged the appropriate service charge per quarter based on the water meter size which would be needed if the property were to be connected to the municipal water system plus a reasonable estimate of the water consumed per quarter.

(D) *Meters.* The city will install water meters on non-metered residential properties at the request of the property owner, for a charge for sanitary sewer metering only, in an amount as established by the fee resolution set forth in the Appendix to this code.

(E) *Surcharge for noncompliance.* A surcharge in the amount established in the fee resolution set forth in the Appendix to this code is imposed on every sewer bill mailed on or after February 1, 1999, to property owners who are not in compliance with the regulations relating to clear water discharges outlined in these code sections or who have refused to allow their property to be inspected to determine if there is compliance. All properties found during reinspection to have violated these code sections are subject to the $100 per month penalty for all months between the two most recent inspections. The surcharge will be added every month until the property is in compliance. The surcharge will continue to be levied monthly on properties not complying with these code sections.

('72 Code, § 510:00) (Am. Ord. 1979-301(A), passed 10-9-79; Am. Ord. 1981-375(A), passed 12-14-81; Am. Ord. 1995-774, passed 4- 24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.76 SEWER CONNECTION CHARGES.

(A) In all areas where sanitary sewer service is available, connection charges must be paid before a building permit is issued.

(B) In all areas and for all uses where sanitary sewer service is available, whenever service availability charge(s) (SAC unit/s) must be charged and paid to Metropolitan Council Environmental Services, a sewer connection charge must be paid to the city in the amount established in the fee resolution set forth in the Appendix to this code except as otherwise allowed to be deferred pursuant to the city's Sewer Availability Charge and Water Access Charge Payment Deferral Program.

('72 Code, § 510:05) (Am. Ord. 1986-511(A), passed 1-27-86; Am. Ord. 1993-744, passed 11-22-93; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2015-1197, passed 9-28-15)

§ 99.77 PERMIT AND INSPECTION FEE.

(A) A sewer connection permit and inspection fee in the amounts established in the fee resolution set forth in the Appendix to this code must be paid to the city at the time the application is filed.

(B) Any property installing a sump pump or other devices to control clear water discharges to the sanitary sewer is required to receive a permit from the city to ensure compliance with these code sections. The city will issue the permit upon receipt of an application and the fees as established by the city from time to time. Failure to secure a permit for sump pump installation and/or other devices intended to redirect clear water is considered a violation of City Code and subjects the property owner to the surcharges outlined in these code sections.

('72 Code, § 510:10) (Am. Ord. 1977-240(A), passed 2-28-77; Am. Ord. 1993-744, passed 11-22-93; Am. Ord. 1998-890, passed 12-

14- 98)

§ 99.78 BILLS AND METER READINGS.

All bills for sanitary sewage disposal as furnished and supplied by the city are payable quarterly.

('72 Code, § 510:11) (Am. Ord. 1995-774, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07)

§ 99.79 LATE CHARGES.

There is a late charge of 10% of the unpaid balance or a minimum of $1 for sewer billings not paid within 20 days after the billing date. Late charges also apply to the surcharges provided for in § 99.75(E).

('72 Code, § 510:15) (Am. Ord. 1998-890, passed 12-14-98)

§ 99.80 CERTIFICATION OF DELINQUENT ACCOUNTS TO COUNTY FOR COLLECTION.

The City Council may make any delinquent charges a lien against the property and certify unpaid charges to the County Auditor with taxes against the property served for collection as other taxes are collected, all pursuant to M.S. § 444.075, Subd. 3. If the delinquent charges are certified for collection with the property taxes, the city will add a fee as established in the resolution set forth in the Appendix to this code to each delinquent account to cover the administrative costs incurred by the city in collecting the delinquent charges.

('72 Code, § 510:16) (Am. Ord. 1980-346(A), passed 12-8-80; Am. Ord. 1981-375(A), passed 12-14-81; Am. Ord. 1993-744, passed 11- 22-93; Am. Ord. 1998-890, passed 12-14-98)

§ 99.81 PRIVATE SEWER SYSTEM PERMIT FEES.

At the time an application is filed for a private sewer system permit, a permit fee for a private sewer system must be paid to the city as established in the fee resolution as set forth in the Appendix to this code.

('72 Code, § 510:20) (Am. Ord. 1980-346(A), passed 12-8-80; Am. Ord. 1985-487(A), passed 8-26-85; Am. Ord. 1986-540(A), passed 8- 18-86)

§ 99.82 REINSPECTION FEE.

In the event a reinspection is necessary, the fee is in the amount established in the fee resolution set forth in the Appendix to this code. This fee also applies for reinspection regarding sump pumps and other clean water discharge devices.

('72 Code, § 510:25) (Am. Ord. 1985-487(A), passed 8-26-85; Am. Ord. 1986-540(A), passed 8-18-86; Am. Ord. 1993-744, passed 11- 22-93; Am. Ord. 1998-890, passed 12-14-98)

§ 99.83 SEWER SERVICE AVAILABILITY CHARGE.

(A) *Charge imposed.* There is imposed on each new building constructed within the city and to each existing building connecting to the municipal sewer system a sewer service availability charge. This charge is imposed to assist the city in meeting its obligations to the Metropolitan Council Environmental Services pursuant to M.S. Chapter 473C.

(B) *Amount of charge.* The sewer service availability charge established by Metropolitan Council Environmental Services is used as the basis for payments made to Metropolitan Council Environmental Services by the city.

(C) *Credits against charge.* The sewer service availability charge(s) may be reduced by the principal amount of any special

assessment for interceptor sanitary sewers financed in whole or in part by Metropolitan Council Environmental Services, or their predecessors in authority, and levied against the parcel of record upon which the building to be charged for such service is or will be located. The city may reduce the charge by amounts previously levied and paid or still unpaid against the parcel. There must be no reduction in the sewer service availability charges levied against any parcel, for trunk, sub-trunk lateral or sewer service connection. If the interceptor assessment exceeds the amount of the sewer service availability charge, the city must not pay out or reduce assessments by the amounts.

(D) *Administration*. An applicant for a permit for a new building construction or for connection to the sewer system must pay the sewer service availability charge to the city together with other fees required for the issuance of a building permit or sewer connection permit. The Building Official may not issue a building or sewer connection permit unless the charge is paid.

('72 Code, § 510:30) (Am. Ord. 1973-136, passed 2-12-73; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 99.99 PENALTY.

Anyone who violates any provision of this chapter for which no specific penalty is provided shall be punished as set forth in § 10.99.

CHAPTER 100: WATER

Section

Cross-reference:

Private sewer and water systems, see §§ 101.01 et seq.

GENERAL PROVISIONS

§ 100.01 TITLE.

This chapter comprises and is referred to hereunder as the "water code."

('72 Code, § 675:00) (Am. Ord. 1995-779, passed 4-24-95)

§ 100.02 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms in the water code are in accordance with the Minnesota State Building Code, Chapter 4715, Plumbing Code and as otherwise set forth as follows:

MUNICIPAL WATER SUPPLY SYSTEM. All facilities for collecting, pumping, and distributing water, in which all owners of abutting properties have equal rights and is controlled by this public authority.

PERSON. Any individual, firm, company, association, society, corporation or group.

('72 Code, § 675:02) (Am. Ord. 1995-779, passed 4-24-95)

§ 100.03 DAMAGE.

It is unlawful for any person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the municipal water supply system.

('72 Code, § 675:03) (Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 100.04 INSPECTION.

The City Building Official and other duly authorized employees of the city bearing proper credentials and identification are permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of the water code.

('72 Code, § 675:04) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 100.05 LIABILITY.

Any person violating any of the provisions of the water code becomes liable to the city for any expense, loss, or damage occasioned the city by reason of such violation, including attorney's fees.

('72 Code, § 675:07) (Am. Ord. 1995-779, passed 4-24-95)

§ 100.06 REVENUES.

All revenues derived from these rates and charges are credited to the Public Utilities Revenue Accounts. Such revenue must be used only for the purpose of paying the cost of operating and maintaining the public sewer system and the water supply system, paying charges made by Metropolitan Council Environmental Services, providing an adequate depreciation fund, paying costs of meter-reading, billing, collection, and other similar or related sanitary sewer and water operating expenses, provided that any surplus above such needs may be transferred to the general funds.

('72 Code, § 675:09) (Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

CONNECTIONS AND PERMITS

§ 100.15 SERVICE CONNECTIONS.

(A) *Connection required.* Connection to the municipal water supply system is required in accordance with the provisions of the Minnesota State Building Code, Chapter 4715, Minnesota Plumbing Code, and the ordinances of the City of Brooklyn Park.

(B) *Private well water system repair.* At such time as the municipal water supply system becomes available to a property served by a private well water system, and the private system cannot be repaired as provided in §§ 101.01 et seq. of this title, a direct connection must be made to the municipal water supply system in compliance with this chapter, and any private wells taken out of service must be sealed in accordance with state law and §§ 101.01 et seq. of this title.

(C) *Separate water service connections required.*

(1) All connections must be made in accordance with the provisions of the Minnesota State Building Code, Chapter 4715, Minnesota Plumbing Code, and Rule 4715.0310 thereof.

(2) A separate and independently connected water service must be provided for each property and for each unit contained within a structure; i.e., a duplex must have two services from the municipal water supply system main to the building. Exceptions to this provision may be allowed subject to the approval of the City Engineer.

(3) Where one building stands at the rear of another on an interior lot and no separate municipal water service connection can be connected to the rear building through an adjoining alley, court, yard or driveway, the building water service from the front building may be extended to the rear building and the whole considered as one water service connection except for rate purposes.

(4) Connection of more than one property to a water service extension of the municipal water supply system that is intended for a single service connection, is subject to the approval of the City Engineer. Such a connection requires for each property, the installation of separate stop cock, box and cover at the public utility easement, right-of-way, or water service extension from the municipal water supply system main. Such separate stop cock, box and cover, when required, must be accessibly and safely located, and must be constructed in accordance with plans approved by the City Engineer. The stop cock, box and cover must be installed by the owner at the owner's expense, becomes the property of the city, and must be maintained by the city so as to be safe and accessible at all times.

('72 Code, § 677:05) (Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 100.16 CHARGES AND ASSESSMENTS.

(A) *Connection charges.* It is unlawful to make or cause to be made, any connection to the municipal water supply system unless the person has first paid any connection charges, charges for tapping municipal water supply system mains and the amount of the water usage deposit hereinafter specified, in amounts set by the City Council. No water will be turned on until all charges against the premises are paid.

(B) *Special assessments.* In addition, no permit will be issued to tap or connect with any municipal water supply system main, either directly or indirectly, from any lot or tract of land, unless:

(1) The property has been specially assessed for the cost of construction of the municipal water supply system with which the connection is made; or

(2) If no assessment has been levied for such construction costs, that proceedings for levying such assessment have been or will be commenced in due course; or

(3) That the cost of construction for the municipal water supply system has been paid by the developer or builder platting the lot or tract of land; this does not include lots or tracts of land served by the municipal water supply system and which were not a part of the plat or tract developed; or

(4) If no assessment has been levied, and no assessment proceedings will be completed in due course, and the developer or builder of the lot or tract has not paid the cost of improving the lot or tract of land, that a sum equal to the portion of the cost of constructing the municipal water supply system which would be assessable against the lot or tract of land has been paid to the City of Brooklyn Park.

(C) *Tax forfeited land - special assessment and reassessment.* When a parcel of tax forfeited land is returned to private ownership and the parcel is benefitted by the municipal water supply system or any other public improvement for which special assessments were canceled because of the forfeiture, the city may, upon notice and hearing as provided for the original assessment, make a reassessment or a new assessment as to the parcel in an amount equal to the amount remaining unpaid on the original assessment plus interest; or the city may impose fees or charges for the use or availability of the improvement or improvements or for connections therewith in an amount not to exceed the amount remaining unpaid on the canceled assessment.

(D) *Special connection charge.* If such assessments have not been paid, no such permit to tap or connect to any water municipal water supply system main will be issued, unless the applicant pays an additional connection fee which is equal to the portion of the cost of construction of the main which would be assessable against the lot or tract to be served by such tapping or connection. The assessable cost is to be determined by the City Engineer, upon the same basis per front foot or lot unit as any assessment previously levied against other property for the main, or, if no such assessment has been levied, upon the basis of the uniform charge per front foot or lot unit which may have been or which will be charged for similar connections with the main, determined on the basis of the total assessable cost of the main allocated on a frontage or lot unit basis.

('72 Code, § 678:00) (Ord. 1995-779, passed 4-24-95)

§ 100.17 PERMIT APPLICATION.

Permits for water connections will be granted to only plumbers licensed by the State of Minnesota.

(A) Application for municipal water supply system service connection must be made on printed forms, must state the legal description, street and official house numbers of the premises to be connected, and the nature of the improvement to be done. A permit and inspection fee in the amount set by the City Council must be payable to the city at the time the application is filed.

(B) The charges for connection to the municipal water supply system mains must be paid at the time the application is submitted and before the service is connected.

(C) No person except a plumber duly licensed by the State of Minnesota or a duly authorized employee of the city will be permitted to do any work on connections to the municipal water supply system.

(D) The curb box and water service extension from the municipal water supply system to the public utility easement or right-of-way are the property of the city and all persons are forbidden to interfere with such extension.

(E) The charges for tapping municipal water service mains and the amount of the water usage deposit must be paid at the time the application is submitted and before the service is installed. No water will be turned on until all charges against the premises are paid.

('72 Code, § 678:15) (Ord. 1995-779, passed 4-24-95)

§ 100.18 COSTS.

All costs and expense incidental to the installation and connection of the building water supply system to the municipal water supply system must be borne by the property owner. The property owner must indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building water supply system.

('72 Code, § 678:20) (Ord. 1995-779, passed 4-24-95)

RULES AND REGULATIONS

§ 100.30 INSPECTION AND WASTE OF WATER.

The city employees designated by the City Manager have full access, at all reasonable hours, to premises to ascertain the location or condition of all hose connections, pipes and plumbing fixtures which in the employee's opinion is causing unnecessary waste of water. The employee must promptly notify the owner or occupant of such in the event any such designated repairs are not made within 24 hours after such notification. The person designated by the City Manager must make such repairs or cause the same to be made and the cost thereof will be charged to the owner or occupant of said premises and collected in the same manner herein provided for the collection of other bills to the city.

('72 Code, § 682:00) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-4-98)

§ 100.31 LAWN SPRINKLING.

To protect the health and safety of the consumers and the general welfare of the city, the City Manager or the City Manager's designee may place in effect and enforce a lawn sprinkling ban and/or restriction. The sprinkling ban shall provide:

(A) All lawn sprinkling using the municipal water supply system is prohibited as prescribed by public notice from the City Manager or the City Manager's designee to all municipal water consumers.

(B) Revocation of a sprinkling ban may be made by the City Manager or the City Manager's designee.

(C) At all times of the year, in case of fire in any part of the city all sprinkling and other unnecessary use of water must be stopped.

(D) An odd-even sprinkling restriction based on street address numbers is in effect May 1 - September 30. Residents with even-numbered addresses water on even days; odd numbers water on odd days. Residents should avoid sprinkling their lawns between the hours of 4:00 and 10:00 p.m., when demand on the water supply system is at its peak. Newly seeded or sodded lawns and irrigation wells are exempt from this restraint.

(E) Violators of this section are guilty of a petty offense.

('72 Code, § 682:05) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 10.99

§ 100.32 UNAUTHORIZED USE OF THE MUNICIPAL WATER SUPPLY SYSTEM PROHIBITED.

(A) It is unlawful to make a connection to the municipal water supply system or to any water service pipe without first obtaining permits required by the city. Unless authorized by the City Manager or the City Manager's designee, it is unlawful to draw water from the municipal water supply system for any purpose other than for fire suppression and extinguishing purposes, without making payment as required by city for water drawn. Any such unauthorized connection or use of the municipal water supply system is considered a penal offense.

(B) In addition to penalties for such penal offense, the city has the right to make any disconnections or repairs necessary to cease such unauthorized use of the municipal water supply system; to recover the actual costs for such disconnections and repairs made; and to recover the actual costs of water consumed or the costs of water estimated to have been consumed as determined by the City Manager or the City Manager's designee.

('72 Code, § 682:10) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 10.99

§ 100.33 OPENING HYDRANTS.

No person except the person designated by the City Manager, or a member of the Fire Department in case of fire, is allowed to open any fire hydrant for any purpose whatsoever, without first securing a permit from the person designated by the City Manager. A copy of the permit must be in the possession of the person operating or opening the hydrant. The fees for water and supplies are as determined by City Council.

('72 Code, § 682:15) (Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 100.34 WATER METERS.

(A) The city exclusively owns and controls the water meter and yoke to be used in the water system.

(1) Meter location in the structure, valve types, electrical grounding, installation and location of remote read wire and read device must be as per requirements of the Operations and Maintenance Department/Public Utilities Division policies.

(2) A domestic service and fire service must be separate and must be controlled by separate valves outside the structure.

(3) Commercial, industrial and multi-family buildings must have separate domestic and irrigation meters.

(B) If any meters are damaged by freezing, hot water, and the like, either by carelessness or neglect of the owner or occupant of the premises or their agents, the owner or occupants must pay for the repairs of such damages. The cost of ordinary maintenance and repairs of all meters owned by the city will be borne by the Operations Maintenance Department/Public Utilities Division.

(C) At the written request of any owner or consumer a person designated by the City Manager will test or cause to be tested the meter supplying the premises of such owner, or consumer. A deposit in the amount established by the City Council will be required before the meter is disconnected which will be returned to the owner or consumer if the meter is not found to be registering correctly within ten percent, otherwise the deposit so made will be retained by the city to cover the cost of the test. The owner or consumer may, if the owner or consumer desires, be present at the time any such test is made. The result of any such test must be reported to the owner or consumer in every case.

(D) If the testing of a meter, as hereinabove provided, indicates that it registers in excess of 10% error, the charge to the consumer for water consumed and used during the quarter within which the test is made shall be the corresponding quarter of the previous year; if the consumer was not receiving service during the corresponding quarter of the previous year, or if for any other reason the charge for such corresponding period cannot be justly applied, the charge so made for the quarter within which such test occurred must be equitably adjusted by the person designated by the City Manager.

(E) The customer is prohibited from obstructing the meter so as to prohibit the reading or repairing of the meter.

(F) It is unlawful for anyone intentionally to misread any meter so as to avoid the payment of just charges for water, and it is unlawful for anyone to tamper with any meter so as to avoid just charges for water.

(G) So as to provide uniformity throughout the municipality, no water meter and yoke will be installed except when obtained from the municipality for that purpose and use in single-family dwellings. Meters and yokes required for larger users must contact the

Building Official. Anyone wishing to install a water meter must obtain the meter and yoke from the Building Official and reimburse the city for the cost thereof as determined by § 100.62 of this chapter. Payment therefor is not construed as giving title to anyone other than the municipality.

('72 Code, § 682:20) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 10.99

§ 100.35 WATER SERVICE PIPE.

The water service pipe and connections thereto including the outlet connection at the curb stop or box, extending from the building or structure to the service extension of the municipal water supply system at the public utility easement or right-of-way are the property of the applicant and must be protected and maintained by the applicant. In the event the applicant or any consumer fails to make any necessary repairs to such service connections or pipe within 24 hours after being notified to do so by a person designated by the City Manager, this designated person must make such repairs and the cost thereof will be charged to the owner of the premises or the consumer and must be collected in the same manner as other bills for water consumption are collected. Installations of water service must comply with all requirements set forth in § 100.15(C), requiring separate services. Irrigation systems or subsystems must have only one water service source.

('72 Code, § 682:25) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07) Penalty, see § 10.99

§ 100.36 TURN ON.

It is unlawful to turn on municipal water after connection to the municipal water supply system is made without first obtaining permission from the person designated by the City Manager who must see that a meter has been placed on the service and in such manner that it will register all water consumed, and that all other parts of the plumbing and pipe fitting in and about the premises have been in full compliance with the rules and regulations of this chapter and all other rules and regulations which the city makes.

('72 Code, § 682:30) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 10.99

§ 100.37 LOCATING TAP AND CURB STOP.

The plumber must assist the person designated by the City Manager in making any measurements necessary in locating the tap in the main and curb stop.

('72 Code, § 682:35) (Ord. 1995-779, passed 4-24-95)

§ 100.38 EXCAVATIONS.

All excavations and backfilling of excavations made within a public easement or public right-of-way must be made in accordance with Chapter 96 of this code. All excavations and backfilling of excavations on private properties within the city must be made in accordance with the State Building Code.

('72 Code, § 682:40) (Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 100.39 CONTRACTS.

All contracts made under the provisions of this chapter must be made by the city with the owner of the property to be served, or the owner's duly appointed agent or attorney, and the owner of the property is liable to the city for all rents accruing through the use of water upon the owner's premises whether the same is personally used by the owner or the owner's renter or lessees or other occupants of the premises.

('72 Code, § 682:45) (Ord. 1995-779, passed 4-24-95)

§ 100.40 OWNER AND CONSUMER RESPONSIBILITY.

Each owner of premises desiring the use of water thereon must file with the city the name of the owner's agent, if the owner desires to act through an agent, or the owner's own address, and must direct in the instrument the one to whom the bill is to be sent, and notices be given, and the same will be binding until a further notice differing therefrom is made in writing and filed with the city. The contract made with the owner must provide that any delinquencies in the payment of the water consumed on the premises are a lien and charge against the premises so served regardless of whether the same is a homestead or not. The lien, in case of a delinquency, must be reported to the County Auditor by the city at the same time and in the same manner as special assessments on real estate for street improvements, and must be collected in the same manner as taxes against real estate provided, however, that nothing in this section is intended to prevent the city from cutting off water service to premises for delinquent payments in accordance with other provisions of this code, city policies, or applicable state or federal laws.

('72 Code, § 682:50) (Ord. 1995-779, passed 4-24-95 ; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07) Penalty, see § 10.99

§ 100.41 DISCONTINUE SERVICE.

Any person desiring to discontinue the use of the municipal water supply system must notify the city and the service will be shut off at the curb cock and the water meter removed. No person other than a duly authorized employee of the city will be permitted to make disconnections from the municipal water supply system. A fee in the amount established by the City Council will be required to disconnect the meter. An additional fee in the amount established by the City Council will be required when the meter is reinstalled and water service resumed. The municipal water supply system service extension will be turned off, disconnected, capped and abandoned in a manner approved by the Building Official.

('72 Code, § 682:55) (Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07)

§ 100.42 CLAIMS.

No claim is to be made against the city for reason of the breaking of any water main or service pipe or fixture or for any other interruption of the supply, by reason of the breaking of machinery or stoppage for necessary repair.

('72 Code, § 682:60) (Ord. 1995-779, passed 4-24-95)

RATES AND CHARGES

§ 100.55 RATES ESTABLISHED.

(A) (1) Effective on the first day of February, 1999 and on the first day of each calendar year thereafter for all water consumed in the first billing quarter by city water system users, water rates charged for each quarter year are established by the fee resolution, set forth in the Appendix to this code.

(2) These rates may be modified by the Council from time to time.

(B) (1) All bills for water furnished and supplied by the city are payable quarterly.

(2) There is a late charge of 10% of the unpaid balance or a minimum of $1.00 for water billings not paid within 20 days after the billing date.

(C) At the end of each quarter from date of the notice or statement all bills not paid become delinquent. The City Council may make any such charges a lien against the property and certify unpaid charges to the County Auditor with taxes against the property served for collection as other taxes are collected, all pursuant to M.S. § 444.075, Subd. 3. If the delinquent charges are certified for collection with the property taxes, the city will add $50 to each delinquent account to cover the administrative costs incurred by the city in collecting the delinquent charges.

(D) In all cases where the water has been turned off for non-payment of water bills or for violation of any rules or regulations of the city, the water will not be again turned on unless and until the bills have been fully paid, all delinquencies removed and a charge in

the amount established in the fee resolution set forth in the Appendix to this code, paid into the city for reinstating water service. The water service will be reinstated only during regular working hours. In addition, if payment is not received by the shut-off deadline for payments, a service charge will be imposed, in the amount established by the fee resolution as set forth in the Appendix to this code.

(E) Schedule of water maintenance and fire protection charges is as established by the fee resolution, set forth in the Appendix to this code.

('72 Code, § 515:00) (Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1996-818, passed 5-28-96; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07)

§ 100.56 FIRE SUPPRESSION AND EXTINGUISHING WATER USAGE.

Water used for the purposes of suppressing or extinguishing fires is without charge to the consumer or premises.

('72 Code, § 515:04) (Ord. 1995-779, passed 4-24-95)

§ 100.57 PERMIT AND INSPECTION FEE; STARTING SERVICE.

A permit and inspection fee in the amount established by the fee resolution, set forth in the Appendix to this code, must be paid at the time of applying for water service.

('72 Code, § 515:05) (Am. Ord. 1985-487(A), passed 8-26-85; Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1994-755, passed 4-11- 94; Am. Ord. 1998-890, passed 12-14-98)

§ 100.58 TAPPING CHARGES.

Charges for making taps for all service pipes are established by the fee resolution as set forth in the Appendix to this code. Rates for pipes larger in diameter than one inch will be determined by the City Manager or the City Manager's designee upon the basis of the actual costs to the city.

('72 Code, § 515:10) (Am. Ord. 1977-240(A), passed 2-28-77; Am. Ord. 1985-487(A), passed 8-26-85; Am. Ord. 1998-890, passed 12- 14-98)

§ 100.59 PRIVATE FIRE HYDRANT MAINTENANCE CHARGES.

(A) The City Manager or the City Manager's designee has the authority to enter into agreements with private property owners to maintain private fire hydrants.

(B) Effective January 1, 1993, an annual maintenance fee will be charged for such maintenance in the amounts established by the fee resolution as set forth in the Appendix to this code.

(C) The charges will be billed in first billing quarter of 1994 and in the first billing quarter of each year thereafter.

('72 Code, § 515:12) (Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1998-890, passed 12-14-98)

§ 100.60 METER TESTING SERVICE.

A deposit in an amount as established by the fee resolution, set forth in the Appendix to this code, will be made for disconnecting, testing and repair of a meter.

('72 Code, § 515:15) (Am. Ord. 1985-477(A), passed 2-11-85; Am. Ord. 1985-487(A), passed 8-26-85; Am. Ord. 1993-748, passed 12- 20-93; Am. Ord. 1998-890, passed 12-14-98)

§ 100.61 METER DISCONNECTION/RECONNECTION OF SERVICE.

A fee in an amount as established by the fee resolution, set forth in the Appendix to this code, must be paid for disconnecting a water meter or connecting a meter.

('72 Code, § 515:20) (Am. Ord. 1985-477(A), passed 2-11-85; Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1998-890, passed 12-14- 98)

§ 100.62 WATER METER INSTALLATION FEE.

Upon application for water service, a fee must be paid for the city to supply and install water meters. The fee will be determined by the City Manager or the City Manager's designee on the basis of the actual costs to the city.

('72 Code, § 515:25) (Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1998-890, passed 12-14-98)

§ 100.63 WATER ACCESS CHARGE (WAC CHARGE).

(A) In all areas and for all uses where city water service is available, at the time an application is filed with the city for a new or enlarged water service, or fire suppression system water service, a water access charge (WAC) must be paid to the city except as otherwise allowed to be deferred pursuant to the city's Sewer Availability Charge and Water Access Charge Payment Deferral Program. This charge does not apply to water service maintenance work unless the water service is enlarged.

(B) Effective on the first day of June of each calendar year beginning June 1, 1999, the WAC is established in the amounts as established by the fee resolution, set forth in the Appendix to this code. A credit for previously paid WAC may be given when a building is remodeled or demolished.

('72 Code, § 515:30) (Am. Ord. 1993-748, passed 12-20-93; Am. Ord. 1996-800, passed 3-25-96; Am. Ord. 1998-890, passed 12-14-98; Am. Ord. 2007-1076, passed 8-20-07 Am. Ord. 2015-1197, passed 9-28-15)

§ 100.64 CITY HYDRANT USE CHARGE.

As set forth in § 100.33 of this chapter, a permit is required to open any fire hydrant and fees are to be charged for water and supplies. A meter deposit must be made and a per day charge for rental of the meter must be paid by the permit holder during the first 30 days and a per day amount thereafter, with a minimum rental, all in amounts as established by the fee resolution, set forth in the Appendix to this code. All water used will be billed at the current irrigation rate per 1,000 gallons used.

('72 Code, § 515:35) (Am. Ord. 1996-800, passed 3-25-96)

§ 100.65 TEMPORARY METER USE CHARGE.

As set forth in § 100.32 of this chapter, a permit is required to request a temporary meter for uses such as a construction trailer. A meter deposit must be made and fees for connecting and disconnecting a meter paid, all in amounts as established by the fee resolution, set forth in the Appendix to this code. All water used will be billed at the current multi-family, commercial, industrial and institutional meter charge and rate per 1,000 gallons used.

(Ord. 2007-1076, passed 8-20-07)

CHAPTER 101: PRIVATE SEWER AND WATER SYSTEMS

Section

§ 101.01 WATER WELL CONSTRUCTION.

Water well construction is regulated by the Minnesota Department of Health.

('72 Code, § 620:01) (Ord. 1984-473(A), passed 12-17-83; Am. Ord. 1995-779, passed 4-24-95)

§ 101.02 INDIVIDUAL SEWAGE TREATMENT STANDARDS ADOPTED.

Minnesota Pollution Control Agency Chapter 7080.0060 through 7080.0315, individual sewage treatment systems, is adopted by reference and made a part of this title except as amended below:

(A) *Amendments.*

(1) Whenever the word "agency" appears, it will be deleted and "City" inserted. Whenever the word "Executive Director" or "director" appears, it will be deleted and "Building Official" inserted.

(2) Sections C1 and C3 are deleted.

(3) Section F26(1) delete 2 or less 750; change 3 or 4 to 4 or less. E Table 11 in Section H2a(2) is amended by deleting Columns II, III, and IV.

(B) *Additional standards.* The following standards will also apply: existing nonconforming systems may be utilized as long as:

(1) The system serves an existing, single family dwelling that is owner occupied.

(2) The system may be required to be brought into conformity when the finished living space is increased or the house is sold.

(3) No nuisance, surface discharge or ground water contamination occur as a result of the operation of the system.

('72 Code, § 620:06) (Ord. 1984-473(A), passed 12-17-84; Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 101.03 ENFORCEMENT.

In addition to the criminal penalties for violation of this ordinance, any dwelling served by a well or individual sewage system not in conformity with this ordinance is considered to be a dangerous building under Minnesota Statutes and must be dealt with accordingly. No building not served by a municipal sewer and/or water system may be occupied nor will any certificate of occupancy be issued by the Building Official unless the provisions of this ordinance are complied with.

('72 Code, § 620:11) (Ord. 1984-473(A), passed 12-17-84; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 101.04 ADMINISTRATION.

This ordinance will be administered by the Building Official.

('72 Code, § 620:16) (Ord. 1984-473(A), passed 12-17-84; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98)

§ 101.05 PERMITS.

It is unlawful to repair, install, construct, pump or modify any individual sewage treatment or disposal system unless the person has first obtained a permit from the Building Official. It is the responsibility of the permittee to obtain the necessary inspections before

doing the work.

('72 Code, § 620:21) (Ord. 1984-473(A), passed 12-17-84; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1998-890, passed 12-14-98) Penalty, see § 10.99

CHAPTER 102: RIGHT-OF-WAY MANAGEMENT

Section

§ 102.20 FINDINGS, PURPOSE, AND INTENT.

(A) To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

(B) This subchapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the city's rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this subchapter, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work through the recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(C) This subchapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This subchapter shall also be interpreted consistent with Minn. Rules 7819.0050 et seq. where possible. To the extent that any provision of this subchapter cannot be interpreted consistently with the Minn. Rules, the interpretation most consistent with the Act and other applicable statutory and case law is intended.

(Ord. 2003-1005, passed 10-20-03)

§ 102.21 ELECTION TO MANAGE THE PUBLIC RIGHTS-OF-WAY.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects pursuant M.S. § 237.163 Subd. 2(b), to manage rights-of-way within its jurisdiction.

(Ord. 2003-1005, passed 10-20-03)

§ 102.22 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED FACILITY. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The City of Brooklyn Park, Minnesota.

COMMISSION. The Minnesota Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with M.S. § 216D.04. Subd. 3, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

(1) Individual project bond, including a "license and permit" bond;

(2) Cash deposit;

(3) Security of a form listed or approved under M.S. § 15.73;

(4) Letter of credit, in a form acceptable to the city;

(5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

DEGRADATION. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minn. Rules 7819.1100, the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. Rules 7819.9900 et seq.

DEGRADATION FEE. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DELAY PENALTY. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

DEPARTMENT INSPECTOR. Any person authorized by the city to carry out inspections related to the provisions of this subchapter.

DIRECTOR. The City Manager, or his or her designee.

EMERGENCY. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

EXCAVATE. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

EXCAVATION PERMIT. The permit which, pursuant to this subchapter, must be obtained before a person may excavate in a right-of-way. An ***EXCAVATION PERMIT*** allows the holder to excavate that part of the right-of-way described in such permit.

EXCAVATION PERMIT FEE. Money paid to the city by an applicant to cover the costs as provided in § 102.31.

FACILITY or ***FACILITIES.*** Tangible asset in the public right-of-way required to provide utility service. The term does not include ***FACILITIES*** to the extent the location and relocation of such ***FACILITIES*** are preempted by M.S. § 161.45, governing utility facility placement in state trunk highways.

FIVE-YEAR PROJECT PLAN or ***CIP.*** Projects adopted by the city for construction within the next five years under the Capital Improvement Plan ("CIP").

HIGH DENSITY CORRIDOR. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

HOLE. An excavation in the right-of-way, with the excavation having a length less than the width of the pavement or adjacent pavement.

LOCAL REPRESENTATIVE. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this subchapter.

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; M.S. § 237.162 or §237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 102.50.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

OBSTRUCTION PERMIT. The permit which, pursuant to this subchapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified

therein, including a blanket permit for a period of time and for types of work specified by the Director, if deemed appropriate in his or her discretion.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 102.28.

PATCH or ***PATCHING.*** A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate, or gravel.

PERMIT. Same as "right-of-way permit" in M.S. § 237.162.

PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this subchapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PUBLIC RIGHT-OF-WAY. Same as M.S. § 237.162, Subd. 3.

REGISTRANT. Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

RESTORE or ***RESTORATION.*** The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this subchapter.

RIGHT-OF-WAY USER. (1) A telecommunications right-of-way user as defined by M.S. § 237.162, Subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE or ***UTILITY SERVICE.*** (1) Services provided by a public utility as defined in M.S. § 216B.02, Subd. 4 and Subd. 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications system as defined in M.S. § 238.02, Subd. 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under M.S. Chapter 308A; and (6) water, sewer, steam, cooling or heating services.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

TEMPORARY SURFACE. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's CIP, in which case it is considered full restoration.

TRENCH. An excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

TELECOMMUNICATION RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this subchapter, a cable communication system defined and regulated under M.S. Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in M.S. § 216B.02, a municipality, a municipal gas or power agency organized under M.S. Chapters 453 and 453A, or a cooperative electric association organized under M.S. Chapter 308A, are not telecommunications right-of-way users for purposes of this subchapter.

(Ord. 2003-1005, passed 10-20-03)

§ 102.23 ADMINISTRATION.

The Director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

(Ord. 2003-1005, passed 10-20-03)

§ 102.24 UTILITY COORDINATION COMMITTEE.

The city may create an advisory Utility Coordination Committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the city.

(Ord. 2003-1005, passed 10-20-03)

§ 102.25 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) *Registration*. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(B) *Registration prior to work*. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.

(C) *Exceptions*. Nothing in this section shall be construed to repeal or amend the provisions of a city ordinance establishing the rights of and limitations placed on persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons carrying out or requesting the following work shall not be deemed to use or occupy the right-of-way within the meaning of this section, and shall not be governed by this section. Such work by non-right-of-way users shall be regulated under the City Code chapter noted below, unless provided otherwise.

(1) Other surface landscaping works;

(2) Planting or maintaining boulevard plantings or gardens;

(3) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots, except repairs or restoration necessitated by utility cuts or other work;

(4) Construction or maintenance of street furnishings, bus stop benches, shelters, or posts and pillars;

(5) Construction and maintenance of irrigation systems provided that the system does not connect directly to water mains in the right-of-way.

(D) *Gopher One Call.* Nothing herein relieves a person from complying with the provisions of M.S. Chapter 216D, Gopher One Call Law.

(Ord. 2003-1005, passed 10-20-03)

Cross-reference:

Streets and sidewalks, see Ch. 96

Grass, weed and tree regulations, see Ch. 97

§ 102.26 REGISTRATION INFORMATION.

(A) *Information required*. The information provided to the city at the time of registration shall include, but not be limited to:

(1) Each registrant's name, Gopher One Call facility owner code number or other One Call identifier, address and e-mail address,

and telephone and facsimile numbers;

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be accessible for consultation at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration;

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

(c) Either naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages or otherwise providing evidence satisfactory to the Director that the city is fully covered and will be defended through registrant's insurance for all actions included in Minn. Rule 7819.1250;

(d) Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this section;

(f) The city may require a copy of the actual insurance policies if necessary to ensure the Director that the policy provides adequate third-party claim coverage and city indemnity and defense coverage for all actions included in the indemnity required by Minn. Rule 7819.1250;

(g) Such evidence as the Director may require that the person is authorized to do business in Minnesota.

(B) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. 2003-1005, passed 10-20-03)

§ 102.27 REPORTING OBLIGATIONS.

(A) *Operations.*

(1) Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. If by December 1 the registrant has not developed its construction and maintenance information for the coming year, the registrant shall file such information with the city thereafter as soon as it is developed. The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

(2) The term "project" in this section shall include both next-year projects and five-year projects.

(3) By March 1 of each year and subject to the Minnesota Data Practices Act the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by March 1, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) *Additional next-year projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. 2003-1005, passed 10-20-03)

§ 102.28 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

(1) An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) Other permits may be required for persons in accordance with Chapter 96. (See § 102.25(C)).

(4) Permits for installation, repair or otherwise work on above-ground facilities within the meaning of M.S. § 237.163, Subd. 6(b) (4) will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand-dug for the purpose of placing a pole-type structure.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, or requests a verbal extension, and (ii) a new permit or permit extension is granted. Verbal extensions may be granted by the Director for a period no greater than 48 hours or for emergencies.

(C) *Delay penalty.* In accordance with Minn. Rule 7819.1000 Subp. 3, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(E) *Routine obstruction and excavation.* Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than eight hours in duration may, in the Director's discretion, be considered routine obstruction and excavation and include by way of example, switching, replacing fuses, replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections.

(Ord. 2003-1005, passed 10-20-03)

§ 102.29 PERMIT APPLICATIONS.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Registration with the city pursuant to this subchapter;

(B) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the applicant;

(C) Payment of money due the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

(D) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing;

(E) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(Ord. 2003-1005, passed 10-20-03)

§ 102.30 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this subchapter, the city shall issue a permit within five business days of receiving a completed application.

(B) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

(C) *Notification.* Upon request by the Director, the permittee shall notify in writing in a form approved by the Director all residents specified by the Director whose property is adjacent to the right-of-way where the proposed work is to be done indicating start and completion dates. Written notification is not required for routine obstruction and excavation projects described in § 102.28(E). If permittee chooses not to carry out the notice process required with its own staff, permittee shall promptly inform the Director. The city may then carry out the notice process using its own staff, and permittee shall reimburse the city its costs of providing required notice, within 30 days of billing.

(Ord. 2003-1005, passed 10-20-03)

§ 102.31 PERMIT FEES.

(A) *Fee schedule and fee allocation.* The city's permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the city's actual costs incurred in managing the right-of-way and shall be based on an allocation among all users of the right-of-way, including the city.

(B) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

(1) City management costs;

(2) Degradation costs, if applicable.

(C) *Obstruction permit fee.* The city shall establish the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

(D) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing, or on some other payment plan agreed to by the Director at his or her discretion.

(E) *Non-refundable.* Permit fees that were paid for a permit that the city has revoked for a breach as stated in § 102.41 are not refundable.

(F) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(Ord. 2003-1005, passed 10-20-03)

§ 102.32 RIGHT-OF-WAY PATCHING AND RESTORATION.

(A) *Timing*. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under § 102.35.

(B) *Patch and restoration*. Permittee must patch its own work. The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or to restore the surface portion of right-of-way itself.

(1) *Permittee restoration*. If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.

(2) *City restoration*. If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles or otherwise fails for reasons not caused by city's failure to properly restore, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(3) *Degradation fee in lieu of restoration*. In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate-based material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards*. The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rule 7819.1100.

(D) *Duty to correct defects*. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Upon notification from the city, permittee shall correct all restoration work to the extent necessary, using the method required by the city. Unless otherwise agreed to by the Director, said work shall be completed within 14 calendar days of receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under § 102.35.

(E) *Failure to restore*. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and promptly complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Director. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Ord. 2003-1005, passed 10-20-03)

§ 102.33 JOINT APPLICATIONS.

(A) *Joint application*. Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(B) *Shared fees*. Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(C) *With city projects*. Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. 2003-1005, passed 10-20-03)

§ 102.34 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area*. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

(B) *Limitation on dates*. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work

before the permit start date or, except as provided herein, continue working after the end date. Except in the case of verbal extensions, if a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(Ord. 2003-1005, passed 10-20-03)

§ 102.35 OTHER OBLIGATIONS.

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including M.S. §§ 216D.01 et seq. (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(B) *Prohibited work.* Except in an emergency, or with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(C) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with, unless otherwise approved by the Director. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(D) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and shall use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the State of Minnesota.

(Ord. 2003-1005, passed 10-20-03)

§ 102.36 DENIAL OF PERMIT.

The city may deny a permit for failure to meet the requirements and conditions of this subchapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

(Ord. 2003-1005, passed 10-20-03)

§ 102.37 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules 7819.1100, 7819.5000 and 7819.5100 and other applicable local requirements such as the Brooklyn Park Standard Specifications, in so far as they are not inconsistent with the M.S. § 237.162 and § 237.163.

(Ord. 2003-1005, passed 10-20-03)

§ 102.38 INSPECTION.

(A) *Site inspection.* Permittee shall make the work site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(B) *Authority of director.*

(1) At the time of inspection the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(2) The Director may issue an order to the permittee to correct any work that does not conform to the terms of the permit or

other applicable standards, conditions, or code. If the work failure is a "substantial breach" within the meaning of M.S. § 237.163 Subd. 4(c), the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Director. The permittee shall present proof to the Director that the violation has been corrected within the time period set forth by the Director in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to § 102.41.

(Ord. 2003-1005, passed 10-20-03)

§ 102.39 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.* Each registrant shall immediately notify the Director of any event regarding its facilities that the registrant considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, unless the Director allows a longer time, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this subchapter for the actions it took in response to the emergency. If the Director concludes that a registrant is required to perform work at the facility solely because of an emergency created by another registrant and the work is performed in the immediate area of the emergency work, the Director may waive the permit otherwise required by the registrant(s) called to the emergency created by another party. If the city becomes aware of an emergency regarding a registrant's facilities, the city will contact the registrant's emergency phone number as registered with the city or listed in the phone directory. The city will make the area safe, as necessary. If there is no response from the registrant, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the permittee or registrant whose facilities occasioned the emergency.

(B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the City Council, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this subchapter.

(Ord. 2003-1005, passed 10-20-03)

§ 102.40 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

(Ord. 2003-1005, passed 10-20-03)

§ 102.41 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

(3) Any material misrepresentation of fact in the application for a right-of-way permit;

(4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

(5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 120.30.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial

breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within a time established by the Director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. 2003-1005, passed 10-20-03)

§ 102.42 MAPPING DATA.

Each registrant and permittee shall provide mapping information in a form required by the city in accordance with Minn. Rules 7819.4000 and 7819.4100.

(Ord. 2003-1005, passed 10-20-03)

§ 102.43 UNDERGROUNDING.

(A) *Purpose.* The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster (i) safe travel over the right-of-way, (ii) non-travel related safety around homes and buildings where overhead feeds are connected and (iii) orderly development in the city. Location and relocation, installation and reinstallation of facilities in the right-of-way or in or on other public ground must be made in accordance with this section. This section is intended to be enforced consistently with state and federal law regulating right-of-way users, specifically including but not limited to M.S. §§ 161.45, 237.162, 237.163, 300.03, 222.37, 238.084 and 216B.36 and the Telecommunications Act of 1996, 47 U.S.C. § 253.

(B) *Undergrounding of facilities.* Facilities newly installed, constructed or otherwise placed in the public right-of-way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this section and in accordance with applicable construction standards, subject to the exceptions below. Above-ground installation, construction, modification, or replacement of meters, gauges, transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. The requirements of this section shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

(C) *Undergrounding of permanent replacement, relocated or reconstructed facilities.* If the city finds that one or more of the purposes set forth in division (A) would be promoted, the city may require a permanent replacement, relocation or reconstruction of a facility of more than 300 feet to be located, and maintained underground, with due regard for seasonal working conditions. For purposes of this section, reconstruction means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right-of-way user owning or operating the facilities, or by the city in connection with (1) the present or future use by the city or other local government unit of the right-of-way or other public ground for a public project, (2) the public health or safety, or (3) the safety and convenience of travel over the right-of-way.

(D) *Exceptions to undergrounding.* The following exceptions to the strict application of this section shall be allowed upon the conditions stated:

(1) *Transmission lines.* Above-ground installation, construction, or placement of those facilities commonly referred to as "high voltage transmission lines" shall be allowed unless the Council requires undergrounding of the facilities after providing the right-of-way user notice and an opportunity to be heard. This provision shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.

(2) *Technical/economic feasibility; promotion of policy.* Above-ground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the Council, following consideration and recommendation by the Planning Commission, finds that:

(a) Underground placement would place an undue financial burden upon the landowner, ratepayers, or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights; or,

(b) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions

which adversely affect underground facilities placement; or

(c) The right-of-way user clearly and convincingly demonstrates that none of the purposes under division (A) would be advanced by underground placement of facilities on the project in question, or the city determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.

(3) *Temporary service.* Above-ground installation, construction, or placement of temporary service lines shall only be allowed:

(a) During new construction of any project for a period not to exceed 24 months;

(b) During an emergency in order to safeguard lives or property within the city;

(c) For a period of not more than seven months when soil conditions make excavation impractical.

(E) *Retirement of overhead facilities.* The City Council may determine whether it is in the public interest that all facilities within the city, or facilities within certain districts designated by the city, be permanently placed and maintained underground by a date certain or target date, independently of undergrounding required pursuant to division (B) and division (C). The decision to underground must be preceded by a public hearing, after published notice and written notice to the utilities affected (two weeks published, 30 days written). At the hearing the Council must consider the items in division (E)(2) below and make findings. Undergrounding may not take place until City Council has, after hearing and notice, adopted a plan containing the items in division (E)(3) below.

(1) *Public hearings.* A hearing must be open to the public and may be continued from time to time. At each hearing any person interested must be given an opportunity to be heard. The subject of the public hearings shall be the issue of whether facilities in the right-of-way in the city, or located within a certain district, shall all be located underground by a date certain. Hearings are not necessary for the undergrounding required under divisions (B) and (D).

(2) *Public hearing issues.*

(a) The issues to be addressed at the public hearings include but are not limited to:

1. The costs and benefits to the public of requiring the undergrounding of all facilities in the right-of-way;

2. The feasibility and cost of undergrounding all facilities by a date certain as determined by the city and the affected utilities;

3. The tariff requirements, procedure and rate design for recovery or intended recovery of incremental costs for undergrounding by the utilities from ratepayers within the city;

4. Alternative financing options available if the city deems it in the public interest to require undergrounding by a date certain and deems it appropriate to participate in the cost otherwise borne by the ratepayers.

(b) Upon completion of the hearing or hearings, the City Council must make written findings on whether it is in the public interest to establish a plan under which all facilities will be underground, either citywide or within districts designated by the city.

(3) *Undergrounding plan.* If the Council finds that it is in the public interest to underground all or substantially all facilities in the public right-of-way or in non-right-of-way public ground, the Council must establish a plan for such undergrounding. The plan for undergrounding must include at least the following elements:

(a) Timetable for the undergrounding;

(b) Designation of districts for the undergrounding unless the undergrounding plan is citywide;

(c) Exceptions to the undergrounding requirement and procedure for establishing such exceptions;

(d) Procedures for the undergrounding process, including but not limited to coordination with city projects and provisions to ensure compliance with non-discrimination requirements under the law;

(e) A financing plan for funding of the incremental costs if the city determines that it will finance some of the undergrounding costs, and a determination and verification of the claimed additional costs to underground incurred by the utility;

(f) Penalties or other remedies for failure to comply with the undergrounding.

(F) *Developer responsibility.* All owners, platters, or developers are responsible for complying with the requirements of this section, and prior to final approval of any plat or development plan, shall submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements with said users for installation of such facilities have been made.

(Ord. 2003-1005, passed 10-20-03)

§ 102.44 LOCATION AND RELOCATION OF FACILITIES.

(A) Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(1) *Relocation notification procedure.* The Director shall notify the utility owner at least three months in advance of the need to relocate existing facilities so the owner can determine if relocation or replacement is required and plan any required work. The Director shall provide a second notification to the owner one month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one month of the second notification. To the extent technically feasible, all utilities shall be relocated within one month or in a time frame determined by the Director. The Director may allow a different schedule if it does not interfere with the city's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

(2) *Delay to city project.* The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner fails to meet the relocation schedule due to circumstances within the utility's control, the city may charge the utility owner for all costs incurred by the city because the relocation is not completed in the scheduled timeframe.

(3) *Joint trenching.* All facilities shall be placed in appropriate portions of right-of-way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minn. Rules 7819.5100, Subd. 2, governing safety standards.

(B) *Corridors.* The city may assign a specific area within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that are or, pursuant to current technology, the city expects will be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A typical crossing section of the location for utilities may be on file at the Director's office. This section is not intended to establish "high density corridors." Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city may remain at that location until the city requires facilities relocation to the corridor pursuant to relocation authority granted under Minn. Rules 7819.3100 or other applicable law.

(C) *Limitation of space.* To protect the public health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(Ord. 2003-1005, passed 10-20-03)

§ 102.45 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of M.S. §§ 216D.01 et seq. (One Call Excavation Notice System) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of their facilities to excavators upon request. Nothing in this section is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in M.S. § 216D.01 et seq.

(Ord. 2003-1005, passed 10-20-03)

§ 102.46 INTERFERENCE BY OTHER FACILITIES.

When the city does work in the right-of-way in its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The city costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-

way which it or its facilities damages.

(Ord. 2003-1005, passed 10-20-03)

§ 102.47 RIGHT-OF-WAY VACATION; RESERVATION OF RIGHT.

If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules 7819.3200.

(Ord. 2003-1005, passed 10-20-03)

§ 102.48 INDEMNIFICATION AND LIABILITY.

By registering with the city, or by accepting a permit under this subchapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rule 7819.1250.

(Ord. 2003-1005, passed 10-20-03)

§ 102.49 ABANDONED FACILITIES.

(A) *Discontinued operations.* A registrant who has decided to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this subchapter have been lawfully assumed by another registrant.

(B) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way pursuant to Minn. Rule 7819.3300, unless the requirement is waived by the Director.

(Ord. 2003-1005, passed 10-20-03)

§ 102.50 APPEAL.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are not in conformity with M.S. § 237.163, Subd. 6 may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Ord. 2003-1005, passed 10-20-03)

CHAPTER 103: BUILDING CODE

Section

General Provisions

Cross-reference:

Board of Appeals and Adjustment, see §§ 31.15 et seq.

Planning Commission, see §§ 31.60 et seq.

GENERAL PROVISIONS

§ 103.01 BUILDING CODE.

(A) *Codes adopted by reference.* The *Minnesota State Building Code* ("MSBC"), as adopted by the Commissioner of Labor and Industry pursuant to M.S. §§ 16B.59 to 16B.75, including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Labor and Industry, through the Building Codes and Standards Unit, is hereby adopted by reference with the exception of the optional chapters, unless specifically adopted in this section. The *Minnesota State Building Code* is hereby incorporated in this section as if fully set out in full.

(B) *Application, administration and enforcement.* The application, administration and enforcement of the building code shall be in accordance with Minnesota State Building Code. The code shall be enforced within the extraterritorial limits permitted by M.S. § 16B.62, Subd. (1), if so established by this section. The code enforcement agency of the city is the Building Inspection Division. The building code shall be enforced by the city's Certified Building Official, as designated by M.S. § 16B.65, Subd. (1).

(C) *Permits and fees.* The issuance of permits and the collection of fees shall be as authorized in M.S. § 16B.62, Subd. (1). Permit fees shall be assessed for work governed by the code in accordance with the fee schedule adopted by the City Council. In addition, a surcharge fee shall be collected on all permits issued for work governed by this code in accordance with M.S. § 16B.70.

(1) *Building valuation.* Building valuation for the purpose of establishing building permit fees is as set forth by the most current Building Valuation Data published by the Minnesota Department of Labor and Industry, Building Codes and Standards Unit.

(2) *Residential contractor license check.* As provided by M.S. Ch. 306, for any residential building contractor required to be licensed by the state, the applicant for a building permit for residential work must pay a fee for a building permit for administration and review of residential contractor licenses. The fee is in an amount as established by the fee resolution, set forth in the Appendix to this code.

(D) *Violations and penalties.* It is unlawful to perform any work subject to the building code for which a permit is required without obtaining the permit and having paid the fees required herein. Permits, inspections, and collections of fees are as authorized in M.S. § 16B.62, Subd. (1). A violation of the building code is a misdemeanor.

(E) *Building code optional chapters.* The Minnesota State Building Code, established pursuant to M.S. §§ 16B.59 to 16B.75, allows cities to adopt by reference and enforce certain optional chapters of the most current edition of the Minnesota State Building Code. The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for the city:

(1) Chapter 1306 - Special Fire Protection Systems option, incorporating subpart 2 (Existing and New Buildings).

('72 Code, § 315:00) (Am. Ord. 1993-744, passed 11-22-93; Am. Ord. 1995-779, passed 4-24-95; Am. Ord. 1996-830, passed 12-16-96; Am. Ord. 1998-891, passed 12-14-98; Am. Ord. 2003-999, passed 6-2-03; Am. Ord. 2007-1075, passed 8-20-07)

§ 103.02 FEES AND CHARGES.

(A) *Basic fees.*

(1) The fee for any building permit is determined by the Building Official in accordance with the provisions of § 103.01. The fees established and set forth therein or in other sections of the city code must be collected where applicable by the Building Official before the issuance of any permits. The Building Official must not issue any such permits for which the payment of a fee is required by the schedules until the fee is paid. Applications must be filed as required by this code or as established by the Building Official. All fees collected must be paid to the Finance Director by the Inspection Department daily, or as soon after collection as practicable.

(2) Prior to the issuance of any building permit which requires on-site improvements, including but not limited to the construction of parking facilities, garbage refuse pickup stations, lighting, landscape, fencing, or items spelled out in a conditional use permit, the City Council or the Building Official must require a contract and a surety bond guaranteeing to the city the actual construction and installation of the improvements within the period specified in the contract and bond, not exceeding two years.

('72 Code, § 505:00) (Am. Ord. 1980-346(A), passed 12-8-80; Am. Ord. 1981-351(A), passed 11-22-93; Am. Ord. 1993-744, passed 11- 22-93)

(B) *Miscelaneous fees required.* The Building Official must not issue permits for any construction, maintenance, reconstruction, improvements, or uses governed by the MSBC without collecting the fees as established in the schedule set forth in the Appendix to this code.

(C) *Moving and routing.* Moving of any structure and the routing thereof must be cleared through the Director of Public Works with notification to the Police Department for approval of the route and time of the move. All permits must comply with Section 364.12 and the provisions of Section 446 of the city code and M.S. § 221.81, as amended.

(D) *Demolition and moving of buildings; fees required.* Before issuing any building moving permit or a permit for the demolition of any building or structure, the Building Official must require the payment, by the applicant, of fees in accordance with the schedule established by the fee resolution, set forth in the Appendix to this code.

(E) *Underground liquid storage system permit fees.* Fees for the installation, alteration, reconstruction, removal, or repair of any underground liquid storage system are computed and based upon valuations in accordance with the schedule set forth in the Appendix to this code.

(F) *Fire suppression system/fire alarm system permit; fees required.* The installation of any fire suppression sprinkler equipment or system requires the payment by the applicant of fees in the amount provided by the fee resolution, set forth in the Appendix to this code. No permit for the installation of any fire suppression equipment or system or installation of any fire alarm equipment or system will be issued until the applicant files with the Building Official a complete set of plans for such system and approval obtained by the Fire Chief.

(G) *False statements, violations, and penalties.* It is unlawful to make any false statement in connection with the securing of any permit from the Inspection Department. It is unlawful to violate any provision of §§ 103.02, 93.30 et seq., 93.50 et seq., 99.75 et seq., 100.55 et seq., 92.37(B), 151.014, 99.01 et seq., 99.15 et seq., or 99.30 through 99.41, or make any false statement in the affidavit as sworn statement made, as required by this code, in connection with the securing of any permit from the Inspection Department. Any person who violates any of the provisions of this code hereby adopted or fail to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the Building Inspector or by a court of competent jurisdiction, within the time fixed herein, severally for each and every such violation and noncompliance respectively is guilty of a misdemeanor. The imposition of one penalty for any violation does not excuse the violation or permit it to continue; and all such persons are required to correct or remedy the violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained constitute a separate offense. The application of the above penalty is not held to prevent the enforced removal of prohibited conditions.

('72 Code, § 505:10) (Ord. 1977-237(A), passed 2-28-77; Am. Ord. 1989-630(A), passed 8-28-89; Am. Ord. 1990-660(A), passed 10-

8- 90; Am. Ord. 1993-744, passed 11-22-93; Am. Ord. 2003-999, passed 6-2-03)

§ 103.03 PUBLIC UTILITIES; UNDERGROUND INSTALLATION.

(A) *Applicability of provisions.* The section applies to all buildings in the process of being erected on and after its effective date.

(B) *Underground installation.* Utility lines for telephone, cable television, streetlights or other exterior lighting, and all electrical service from existing above-ground trunk systems to the structure must be placed underground. The building official may make appropriate allowance for appurtenances and associated equipment including, but not limited to, surface- mounted transformers, pedestal mounted terminal boxes, and meter cabinets. All such installation must be made in conformance with the *Minnesota State Building Code,* city ordinances, and standards supplemental to this section as deemed necessary by the City Engineer.

(C) *Intent.* It is the intent of this section to supplement the provisions of § 151.086(J) and (K) by requiring underground installation of electrical and other utility service from existing above-ground trunk systems to the structure in all new building construction in the city. Areas of residential housing which are clearly serviced by existing overhead wires and onto which a new building is being constructed are exempt from the provisions of this section.

('72 Code, § 315.60) (Ord. 1974-161(A), passed 2-11-74; Am. Ord. 1995-779, passed 4-24-95)

§ 103.04 PARKING LOT PERMITS.

(A) In all zoning districts in the city it is illegal to expand or create new parking areas in excess of 3000 square feet without first obtaining a permit from the City Planning Director, unless the parking area has been approved as part of a new or amended conditional use permit or has received approval as part of the building permit process.

(B) All plans for new or expanded parking areas in excess of 3000 square feet must be prepared by a licensed professional engineer and must adhere to all applicable provisions contained in the Zoning Code relative to off-street parking areas. A person must not begin work to construct such a parking area for which a permit is required without obtaining the permit and having paid the fees required herein. Fees collected for the permit are in accordance with a fee schedule established by the City Council by resolution set forth as an Appendix to this code.

('72 Code, § 315.75) (Ord. 1995-779, passed 4-24-95)

§ 103.05 TEMPORARY RESIDENCES.

(A) *Special approval permit.* Temporary special approval permits may be issued by the City Council for the use of a recreational vehicle or manufactured home as a principal residence when it can be demonstrated by the applicant that the main residence is uninhabitable due to either manmade or natural disasters. The purpose of this section is to allow temporary housing for residents on their property while the main residence is being repaired or rebuilt. This subsection does not apply to on-site construction offices or construction related trailers used in residential development or utility or industrial building projects.

(B) *Permit application.* Application for a special approval permit must be made to the Community Development Department under the provisions of this section, and must be forwarded to the City Council. An administrative decision may be allowed to be made regarding the temporary occupancy of a trailer, recreational vehicle, or manufactured home prior to City Council action if a situation is deemed to be an emergency and within the scope of this section.

(C) *Information required.* The application for a temporary special approval permit must be accompanied by the following items:

(1) A letter stipulating the proposed length of occupancy in the temporary residence.

(2) The type, size, and facilities of the trailer, recreational vehicle, or manufactured home to be occupied.

(3) A description of how on-site septic disposal will be treated.

(4) A map showing the location of where the temporary residence is to be located.

(5) A statement setting forth the cause of disaster and extent of damages to the residence.

(D) *City Council action.* Any affirmative City Council action must stipulate a maximum period of time that the permit will be in

effect, sanitation concerns, and any special conditions that will provide protection for the applicant or surrounding landowners relevant to their health, safety, or general welfare.

('72 Code, § 315.80) (Ord. 1995-779, passed 4-24-95)

DANGEROUS BUILDINGS

§ 103.60 DANGEROUS BUILDINGS DEFINED.

(A) Any building or structure which has any or all of the following defects may be deemed a dangerous building:

(1) Those whose walls or other structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

(2) Those which, exclusive of the foundation, show 33% or more, of damage or deterioration of the supporting member or members, or 50% of damage or deterioration of the nonsupporting enclosing or outside walls or covering.

(3) Those which have improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

(4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupant or the people of this municipality.

(5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, or to work injury to the health, morals, safety or general welfare of those occupying or using the same.

(6) Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.

(7) Those having inadequate facilities for egress in case of fire or panic.

(8) Those which have parts thereof which are so attached that they may be dangerous to and injure members of the public or the property of others.

(9) Those which because of their condition are unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of this city.

(10) Those buildings existing in violation of any provision of any ordinance of the city relating to the construction of buildings, or the installation therein or thereon of heating, plumbing or electrical equipment, appliances or devices.

(B) All dangerous buildings within the terms of this section are hereby declared to be public and private nuisances and they must be repaired, vacated or demolished as hereinafter provided.

('72 Code, § 1005:00) Penalty, see § 10.99

§ 103.61 STANDARDS FOR REPAIR, VACATION OR DEMOLITION.

The following standards must be followed in substance by the Building Official and the Council in ordering, repair, vacation or demolition:

(A) If the "dangerous building" can reasonably be repaired so that it will no longer constitute a dangerous building under this subchapter, it will be ordered repaired.

(B) If the "dangerous building" is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants, it will be ordered to be vacated.

(C) Any "dangerous building" ordered to be vacated must also be ordered to be either repaired or demolished.

(D) In all cases where a "dangerous building" cannot be repaired so that it will no longer exist as a "dangerous building" under the

terms of this subchapter, it must be ordered to be demolished in accordance with the provisions of M.S. §§ 463.17 through 463.25.

(E) In any case where a "dangerous building" is 50% damaged, decayed or deteriorated from its original condition and construction, it must be ordered to be demolished in accordance with the provisions of M.S.Chapter 463.

(F) In each case when a "dangerous building" is ordered to be repaired, vacated and repaired, vacated and demolished, or demolished if already vacant, a reasonable time must be specified within which the ordered action may readily be accomplished.

('72 Code, § 1005:10) Penalty, see § 10.99

§ 103.62 NOTICE.

In the event that any "dangerous building" is found within this city, the Council or such officer as may be designated by the Council, must notify in writing by mail, the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in the building as shown by the records of the County Auditor of the County of Hennepin, of any building so found. The notice must state the requirement that the owner must vacate or demolish the building in accordance with the terms of the notice and this subchapter; the occupant or lessee must vacate said building, or may have it repaired in accordance with the notice and remain in possession, or the mortgagees, agents or other persons having an interest in said building may at their own risk, repair, vacate or demolish the building or have the work or act done, and the notice must state that such persons must be given such reasonable time as may be necessary to do or have done the work or act required by the notice provided for herein.

('72 Code, § 1005:15)

MECHANICAL AND PLUMBING CONTRACTOR LICENSES

§ 103.75 LICENSE REQUIREMENTS.

It is unlawful for a person, firm or corporation to engage in businesses regulated by the Minnesota State Building Code (MSBC), Chapter 1346, or Chapter 4715, Minnesota Plumbing Code, for any purpose whatsoever in this city without first having procured a license therefor as herein provided.

(A) *Mechanical contractor license.* It is unlawful for a person to engage in any businesses regulated by MSBC Chapter 1346, without first having procured a license therefore from the City Building Official. The license will be issued only to persons who show a thorough understanding of the laws and regulations governing such work and who demonstrate sufficient knowledge, skill and training as to enable them to carry on the work covered by their license.

(B) *Plumbing contractor license.* Persons engaged in businesses regulated by MSBC Chapter 4715, Minnesota Plumbing Code, must be licensed by the State of Minnesota pursuant to M.S. Chapter 326.

('72 Code, § 323:00) (Ord. 1995-779, passed 4-24-95; Am. Ord. 2003-999, passed 6-2-03) Penalty, see § 10.99

Cross-reference:

General business licenses, see Ch. 110

§ 103.76 APPLICATION.

Application for a license must be made to the Building Official and the license will be granted on proof of the applicant's qualifications therefor. The term of a license is from January 1 through December 31 of each calendar year.

('72 Code, § 323:10) (Ord. 1995-779, passed 4-24-95)

§ 103.77 LICENSE FEE.

The license fee is in the amount set by the City Council in the schedule set forth in the Appendix to this code. No license fee is

charged for plumbing contractors licensed by the State of Minnesota.

('72 Code, § 323:15) (Ord. 1995-779, passed 4-24-95; Am. Ord. 2003-999, passed 6-2-03)

§ 103.78 SURETY BOND.

(A) The applicant for a license or permit must furnish a surety bond to the city in the total penal sum of $2,000 for mechanical and $25,000 for pipe layers and plumbers, which is conditioned upon the faithful and lawful performance of all work entered upon within the city. The bond is for the benefit of persons injured or suffering financial loss by reason of failure of performance. The term of the bond must be concurrent with the term of the license. The bond must be written by a corporate surety licensed to do business in the State of Minnesota.

(B) The bond must be filed with the city prior to licensure, except that the applicant may provide to the city a certificate evidencing that the applicant has given bond to the State of Minnesota, pursuant to M.S. § 326.40, Subd. 2, and that the bond is in force and on file with the Secretary of State. If said certificate is provided, a separate bond is not required by the city.

('72 Code, § 323:20) (Ord. 1995-779, passed 4-24-95)

§ 103.79 INSURANCE PROVISIONS.

(A) No license or permit will be issued unless and until the applicant first provides evidence to the city of public liability insurance, including products liability insurance with limits of at least $50,000 per person and $100,000 per occurrence and property damage insurance with limits of at least $10,000. The insurance must be written by an insurer licensed to do business in the State of Minnesota and each licensee must maintain on file with the city a certificate evidencing the insurance and providing that the insurance must not be cancelled without the insurer first giving 15 days written notice to the city. The term of the insurance must be concurrent with the term of the license.

(B) The certificate evidencing insurance must be filed with the city prior to licensure, except that the applicant may provide to the city a certificate evidencing that the applicant has filed evidence of insurance with the State of Minnesota, pursuant to M.S. § 326.40, Subd. 2 and that the evidence of insurance is in force and on file with the State Commissioner of Health. If the certificate is provided, then separate evidence of insurance is not required by the City of Brooklyn Park.

('72 Code, § 323:25) (Ord. 1995-779, passed 4-24-95)

CHAPTER 104: ILLICIT DISCHARGE

Section

§ 104.01 PURPOSE.

(A) The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Brooklyn Park through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

(B) The objectives of this chapter are:

(1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user.

(2) To prohibit illicit connections and discharges to the municipal separate storm sewer system.

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

(Ord. 2017-1217, passed 7-10-17)

§ 104.02 DEFINITIONS.

For purposes of this chapter the following definitions apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED ENFORCEMENT AGENCY. The City of Brooklyn Park.

BEST MANAGEMENT PRACTICES (BMPS). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. ***BMPS*** also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

HAZARDOUS MATERIALS. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTION. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to

enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in this chapter.

INDUSTRIAL ACTIVITY. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying storm water, and is not used for collecting or conveying sewage.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342 (b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual group, or general area-wide basis.

NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of storm water.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and action as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. ***POLLUTANTS*** may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, pesticides, herbicides, and fertilizers; hazardous substances and wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

STORM DRAIN SYSTEM. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM WATER. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER POLLUTION PREVENTION PLAN. A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(Ord. 2017-1217, passed 7-10-17)

§ 104.03 APPLICABILITY.

This chapter shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless explicitly exempted by the City of Brooklyn Park.

(Ord. 2017-1217, passed 7-10-17)

§ 104.04 RESPONSIBILITY FOR ADMINISTRATION.

The City of Brooklyn Park shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon city may be delegated in writing by the City Engineer to persons or entities acting in the beneficial interest of or in the

employ of the city.

(Ord. 2017-1217, passed 7-10-17)

§ 104.05 SEVERABILITY.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

(Ord. 2017-1217, passed 7-10-17)

§ 104.06 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this chapter and minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(Ord. 2017-1217, passed 7-10-17)

§ 104.07 LAWN FERTILIZER RESTRICTIONS.

(A) *Timing of fertilizer application.* No lawn fertilizer shall be applied when the ground is frozen and in no event during the period of November 15 through April 1 of the succeeding year.

(B) *Impervious surfaces.* Lawn fertilizer shall not be applied, spilled or otherwise deposited on any impervious surfaces. Any lawn fertilizer applied, spilled or deposited, either intentionally or accidentally, on impervious surface shall be immediately and completely picked up.

(C) *Buffer zones.* No lawn fertilizer shall be applied within any established wetland buffer zone or within 20 feet of the edge of any wetland, pond, river, creek or lake.

(D) *Lawn fertilizer content and application rate.* No lawn fertilizer containing any amount of phosphorus or other compounds containing phosphorus, such as phosphate shall be applied to any turf within the city except when the following conditions apply:

(1) Newly established turf areas for the turf's first growing season; or

(2) In turf areas which a soil test confirms that the turf area is below phosphorus levels established by the University of Minnesota Extension Service. The fertilizer to be applied shall not contain an amount of phosphorus that exceeds the amount of phosphorus and the appropriate application rate recommended in the soil test evaluation.

(E) *Notice requirement.* Retail businesses selling lawn fertilizer containing phosphorus shall post a notice in a conspicuous location near the lawn fertilizer notifying customers of the limitation on the use of lawn fertilizer containing phosphorous contained in this section.

(F) *Violations.* For the first 12 months following the effective date of this section, no penalty shall attach to its violation. Thereafter, a person violating any provision of this section shall be guilty of a petty misdemeanor and upon conviction shall be subject to the penalties imposed by Minnesota Statutes for petty misdemeanor offenses.

(Ord. 2-17-1217, passed 7-10-17)

§ 104.08 DISCHARGE PROHIBITIONS.

(A) *Prohibition of illegal discharges.* No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, dechlorinated swimming pools, and any other water source not containing pollutants.

(2) Discharges specified in writing by the authorized by the city as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the city agency prior to the time of the test.

(4) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(B) *Prohibition of illicit connections.*

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

(3) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(4) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval from the city.

(5) Any drain or conveyance that has not been documented in plans, maps, or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the city requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer, or that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(Ord. 2017-1217, passed 7-10-17)

§ 104.09 WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. 2017-1217, passed 7-10-17)

§ 104.10 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City Council prior to the allowing of discharges to the MS4.

(Ord. 2017-1217, passed 7-10-17)

§ 104.11 MONITORING OF DISCHARGES.

(A) *Applicability.* This section applies to all facilities that have storm water discharges associated with industrial activity, including

construction activity.

(B) *Access to facilities.*

(1) The city or their designee shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.

(2) Facility operators shall allow the city ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The city shall have the right to set up on any permitted facility such devises as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devises used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the city access to a permitted facility are a violation of a storm water discharge permit and of this chapter. A person who is the operator of the facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

(7) If the city has been refused access to any part of the premises from which stormwater is discharged, and the city is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. 2017-1217, passed 7-10-17)

§ 104.12 BEST MANAGEMENT PRACTICES.

The city will adopt requirements identifying best management practices (BMPs) of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

(Ord. 2017-1217, passed 7-10-17)

§ 104.13 NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the

event of a release of non-hazardous materials, said person shall notify the city in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(Ord. 2017-1217, passed 7-10-17)

§ 104.14 ENFORCEMENT.

(A) *Notice of violation.*

(1) Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the city may order compliance by written notice of violation to the responsible person. The notice of violation shall contain:

(a) The name and address of the alleged violator;

(b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;

(c) A statement specifying the nature of the violation;

(d) A description of the remedial measures necessary to restore compliance with this chapter in a time schedule for the completion of such remedial action;

(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(f) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 15 days of service of notice of violation; and

(g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by the city or their designee and the expense thereof shall be charged to the violator.

(2) Such notice may require without limitation:

(a) The performance of monitoring, analysis, and reporting;

(b) The elimination of illicit connections or discharges;

(c) That violating discharges, practices, or operations shall cease and desist;

(d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(e) Payment of a fine to cover administrative and remediation costs;

(f) The implementation of source control or treatment BMPs.

(B) *Compensatory action.* In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the city may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(C) *Suspension of MS4 access.*

(1) Suspension due to illicit discharges in emergency situations. The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(2) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The city will notify a violator of the

proposed termination of its MS4 access. The violator may petition the city for reconsideration and a hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the city.

(D) *Criminal prosecution*. Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of $1,000 per violation per day and/or imprisonment for a period of time not to exceed 90 days. The city may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

(Ord. 2017-1217, passed 7-10-17)

§ 104.15 APPEAL OF NOTICE OF VIOLATION.

Any person receiving a notice of violation may appeal the determination of the city. The notice of appeal must be received within 15 days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the city or their designee shall be final.

(Ord. 2017-1217, passed 7-10-17)

§ 104.16 ENFORCEMENT MEASURES AFTER APPEAL.

If the violation had not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 15 days of the decision of the municipal authority upholding the decision of the city, then representatives of the city shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord. 2017-1217, passed 7-10-17)

§ 104.17 COST OF ABATEMENT OF THE VIOLATION.

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this chapter shall become liable to the city by reason of such violation.

(Ord. 2017-1217, passed 7-10-17)

§ 104.18 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated and continues to violate the provisions of this chapter, the city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(Ord. 2017-1217, passed 7-10-17)

§ 104.19 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(Ord. 2017-1217, passed 7-10-17)

CHAPTER 105: SWIMMING POOLS

Section

Cross-reference:

General business licenses, see Ch. 110

§ 105.01 PUBLIC SWIMMING POOLS.

Public swimming pools, spas and hot tubs must be installed and maintained in accordance with rules and regulations of the Minnesota Department of Health relating to public swimming pools and entitled Public Swimming Pools, Chapter 4717.

('72 Code, § 432:00) (Ord. 1972-106, passed 5-8-72; Am. Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 105.02 LICENSE REQUIRED.

All public swimming pools in the city as defined in the regulations must be licensed annually and inspected by the city.

(A) *Application*. Application for a license must be made to the Licensing Division. The term of a license is from May 1 through April 30 of each calendar year.

(B) *License fee*. The license fee is in the amount set by the City Council in the fee resolution as set forth in the Appendix to this code.

(C) No person may construct or operate a public swimming pool without first having obtained a license from the city under this chapter and without first having received plan review approval from the Minnesota Department of Health.

('72 Code, § 432:02) (Ord. 1995-779, passed 4-24-95; Am. Ord. 2012-1135, passed 3-26-12) Penalty, see § 10.99

§ 105.03 PERMITS REQUIRED.

Unless exempt under the provisions of Minnesota State Building Code, it is unlawful to erect, construct, enlarge, alter, or locate any swimming pool, spa or hot tub on any property within the city or cause the same to be done without first obtaining a building permit from the City Building Official. This requirement applies to any public swimming pool, and to any private swimming pool constructed above or below ground level if the depth of the pool is in excess of 24 inches.

('72 Code, § 432:05) (Ord. 1995-779, passed 4-24-95) Penalty, see § 10.99

§ 105.04 FENCING OF SWIMMING POOLS.

(A) *Barrier required*. Every person in possession of land within the city either as owner, purchaser under contract, lessee, tenant

or licensee, upon which is situated a swimming pool including permanent swimming pools, portable pools, spas and hot tubs must at all times provide and maintain barriers for swimming pools, spas and hot tubs as required herein.

(B) *Public pool barriers.* For public pools, barriers must be installed and inspected and approved in accordance with Rule 4717.1550, "Pool Access Restriction; Fencing," as authorized by M.S. Chapter 144.05.

(C) *Private pool barriers.* For private pools in excess of 24 inches in depth, barriers must be installed in accordance with the following:

(1) The barrier must be constructed of corrosion and decay resistant materials or other materials approved by the City Building Official. The barrier must not be less than four feet in height and must have no intermediate openings through which a four inch sphere may pass. The bottom of the barrier must be not more than four inches above the sidewalk or finished grade. For barriers constructed in excess of six feet six inches in height, the City Building Official may require that the barrier be designed or certified by a Minnesota Licensed Professional Engineer to withstand a minimum basic wind speed of 80 miles per hour.

(2) Gates and doors through the barrier must not exceed four feet in width unless approved by the City Building Official. A gate serving a driveway must not be used to meet the barrier requirements of this section. All gates or doors opening through the barrier must be equipped with self-closing and self- latching devices capable of keeping the doors or gates securely closed at all times; provided, however, that doors accessing the pool area from a dwelling and forming any part of the barrier need not be so equipped. Gates and doors through the barrier must be capable of being securely locked when the pool is not in use. All latches or locking devices on doors and gates required by this section must be installed not less than four feet above the adjoining walks, steps, or ground level.

(3) Where an above ground pool structure is used as a barrier, or when the barrier is mounted on top of the pool structure, the barrier must comply with subdivisions (1) and (2) above. Where the means of access is by ladder or steps, then the ladder or steps must be capable of being secured, locked or removed to prevent access or the ladder or steps must be surrounded by a barrier which meets the requirements of subdivisions (1) and (2) above. When the ladder or steps are secured, locked or removed, any opening created must be protected by a barrier complying with subdivisions (1) and (2) above.

(4) The requirements of this section requiring a barrier or other solid structure surrounding a swimming pool on all sides, may be waived to the extent that the topographical features of the land upon which the pool is constructed or is proposed to be constructed are such as to make the pool area inaccessible and unapproachable from outside the pool area.

('72 Code, § 432:10) (Ord. 1972-115, passed 7-10-72; Am. Ord. 1985-496(A), passed 9-23-85; Am. Ord. 1996-830, passed 12-16-96) Penalty, see § 10.99

§ 105.05 INSPECTIONS.

(A) The city will inspect each public swimming pool in connection with:

(1) New construction;

(2) Remodeling;

(3) A complaint investigation; or

(4) A routine inspection.

(B) *Access to premises.* The person operating the public swimming pool must, upon request of the Health Authority and after proper identification, permit access to all parts of the swimming pool, its related equipment to ensure compliance with all provisions of this chapter.

(C) *Removal and correction of violations.* The owner or operator of a public swimming pool, upon receipt of a report giving notification of violations with the provisions of this chapter, must correct or remove each violation in a reasonable length of time as determined by the city. Failure to remove or correct each violation within the time period noted on the inspection report constitutes a violation of this chapter. The city may issue enforcement actions to ensure compliance with this chapter.

(Ord. 2012-1135, passed 3-26-12)

§ 105.06 ADDITIONAL PROVISIONS.

Except as otherwise modified in this chapter, the following provisions, including all future revisions to them, in Minnesota Statutes and Minnesota Rules, are adopted by reference into this chapter:

(A) M.S. Chapter 157, except § 157.16;

(B) M.S. § 144.1222, except Subdivisions 1 and 1a; and

(C) Minn. Rules parts 4717.0150 through 4717.3975.

(Ord. 2012-1135, passed 3-26-12)

CHAPTER 106: PROPERTY MAINTENANCE

Section

§ 106.01 ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE.

The 2012 International Property Maintenance Code (IPMC), as promulgated by the International Code Council, Inc., is adopted by reference and incorporated into the city code in whole as if it was set out in full, subject to the amendments contained in this chapter.

(Ord. 2001-955, passed 8-13-01; Am. Ord. 2009-1104, passed 9-8-09; Am. Ord. 2016-1207, passed 9-12-16)

§ 106.02 AMENDMENTS TO INTERNATIONAL PROPERTY MAINTENANCE CODE.

The following amendments are made to the 2012 International Property Maintenance Code:

(A) Section 101.1 Title. These regulations shall be known as the Property Maintenance Code of the City of Brooklyn Park, hereinafter referred to as "this code."

(B) Section 102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy shall be done in accordance with the procedures and provisions of the Minnesota State Building Code (MSBC), established pursuant to M.S. §§ 326B.101 to 326B.194, as adopted by the city. Nothing in this code shall be construed to cancel, modify or set aside any provision of the MSBC or the City of Brooklyn Park Zoning Code.

(C) Section 102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those listed in Chapter 8, those listed in the MSBC, and considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply to the extent permitted by law and regulation.

(D) Section 103.1 General. The City Manager or his or her designee is responsible for administering the provisions of this code, and the executive official in charge thereof shall be known as the Code Official.

(E) Section 103.2 Appointment. The Code Official shall be appointed by the chief appointing authority of the jurisdiction.

(F) Section 103.5 Fees. The fees for activities and services performed in carrying out responsibilities under this code shall be in amounts set forth by the City Council.

(G) Section 106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day a violation continues after due notice has been served may be deemed a separate offense.

(H) Section 106.6 Execution of compliance orders by public authority. Upon failure to comply with a compliance order within the time set therein (and no appeal having been taken), or upon failure to comply with a modified compliance order within the time set therein, the criminal penalty established hereunder notwithstanding, the City Council, after due notice to the owner, may by resolution

cause the cited deficiency to be remedied as set forth in the compliance order. The cost of such remedy is a lien against the subject real estate. Such a lien may be levied and collected as a special assessment in the manner provided by M.S. Chapter 429. It may be levied for any of the reasons set forth in M.S § 429.101, Subd. 1, and specifically for the removal or elimination of public health or safety hazards from private property. However, the assessment must be payable in a single installment. It is the intent of this section to authorize the city to utilize all of the provisions of M.S. § 429.101 to promote the public health, safety and general welfare.

(I) Section 108.4 Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

(J) Section 111. Not adopted.

(K) Section 112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than collectable by the city charter but less than 100%.

(L) Section 201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the MSBC and the City of Brooklyn Park Zoning Code, such terms shall have the meanings ascribed to them in those codes.

(M) Section 202 General definitions.

CODE OFFICIAL. The official charged with the administration and enforcement of this code, or any duly authorized representative. For the purpose of administration and enforcement of this code, the Building Official shall be the ***CODE OFFICIAL***.

UNSANITARY. Failure to maintain a property in such a manner that creates a danger or hazard to the health of persons occupying or frequenting it. Conditions caused by deterioration or improper installation, methods or materials of construction, equipment, lighting, heating, ventilation, or plumbing, or from existing conditions related to trash, debris, or moisture that may cause infestation or mold.

(N) Section 302.4 Weeds. Not adopted.

(O) Section 304.19 Gates. In accordance with the MSBC, gates required to be self-closing and self-latching shall be maintained such that, when released, they will positively close and latch.

(P) Section 302.8 Motor vehicles. Not adopted.

(Q) Section 302.9 Defacement of property. Not adopted.

(R) Section 304.3 Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall: contrast with their background, be Arabic numerals or alphabet letters, and be a minimum of six inches high with a minimum stroke width of one-half inch.

(S) Section 304.1.1 Unsafe conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the MSBC or the International Existing Building Code as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;

2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;

3. Structures or components thereof that have reached their limit state;

4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;

5. Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and load effects;

6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;

7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;

8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;

9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects;

10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects; or

13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. When substantiated otherwise by an approved method.

2. Demolition of unsafe conditions shall be permitted when approved by the code official.

(T) Section 304.14 Insect screens. During the period from May 15 to October 15, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch. Every swinging door shall also have a self-closing device in good working condition.

(U) Section 305.1.1 Unsafe conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the MSBC or the International Existing Building Code as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;

2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;

3. Structures or components thereof that have reached their limit state;

4. Structural members are incapable of supporting nominal loads and load effects;

5. Stairs, landings, balconies and all similar walking surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

6. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. When substantiated otherwise by an approved method.

2. Demolition of unsafe conditions shall be permitted when approved by the code official.

(V) Section 403.4 Process ventilation. In accordance with the MSBC and the State Fire Code (SFC), where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at its source. Air shall be exhausted to the exterior and not be re-circulated to any space.

(W) Section 403.5 Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems, and shall be exhausted in accordance with the manufacturer's instructions and the State Mechanical Code (SMC).

(X) Section 502.3 Hotels. Not adopted.

(Y) Section 504.1 General. All plumbing fixtures shall be properly installed and maintained in working order. They shall be kept free from obstructions, leaks and defects, capable of performing the functions for which they were designed. In accordance with the Minnesota State Plumbing Code (MSPC), all plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

(Z) Section 505.1 Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or an approved private water system. In accordance with the MSPC, all kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with cold and hot or tempered running water.

(AA) Section 602.1 Facilities required. Heating facilities shall be provided in structures as required by this section and the MSBC.

(BB) Section 602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68° F in all habitable rooms, bathrooms and toilet rooms. This is based on the winter outdoor design temperature for the locality indicated in the Minnesota State Energy Code (MSEC). Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

(CC) Section 602.3 Heat supply. During the period from September 15 to May 15, every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 68° F in all habitable rooms, bathrooms, and toilet rooms.

EXCEPTION: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required, provided that the heating system is operating at its full design capacity.

(DD) Section 602.4 Occupiable work spaces. When occupied during the period from September 15 to May 15, indoor occupiable work spaces shall be supplied with heat to maintain a temperature of not less than 68° F.

(EE) Section 603.5 Combustion air. In accordance with the Minnesota State Mechanical Code (MSMC), a supply of air shall be provided for complete fuel combustion and for ventilation of the space containing the fuel-burning equipment.

(FF) Section 604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section, Section 605 of the IPMC, and the National Electrical Code (NEC) as adopted by the MSBC.

(GG) Section 604.2 Service. In accordance with the NEC, the size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities. Dwelling units shall be served by a three-wire, 120/240-volt, single-phase electrical service with a rating of not less than 60 amperes.

(HH) Section 604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low-voltage fuses, luminaires, ballasts, motors and electronic control, signaling and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the NEC and the MSBC.

(II) Section 604.3.2.1 Electrical equipment. Electrical switches, receptacles and fixtures, including furnace, water heating, security system and power distribution circuits, that have been exposed to fire, shall be replaced in accordance with the provisions of the NEC and the MSBC.

(JJ) Section 701. Scope. Under the provisions of this chapter, the ~~M~~SFC shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

(KK) Section 702.1 General. A safe continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the Minnesota State Building Code.

(LL) Section 702.2 Aisles. In accordance with the ~~M~~SFC, the required width of aisles shall be unobstructed.

(MM) Section 702.3 Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the MSBC.

(NN) Section 702.4 Emergency escape openings. Required emergency escape and rescue openings shall be operational from the inside of the room, without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings. However, such devices must provide a minimum net clear opening size that complies with the MSBC. They shall also be releaseable or removeable from the inside, without the use of a key, tool, or force greater than that required for the normal operation of the escape and rescue opening. Where such bars, grilles, grates or similar devices are installed in existing buildings, smoke detectors shall be installed in accordance with Section 704 of the IPMC.

(OO) Section 704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the MSBC.

(PP) Section 800 General references. Whenever this code refers to the International Codes, such references shall be deemed to be to the comparable applicable code as adopted by the state. Whenever this code refers to the International Zoning Code, such references shall be deemed to be the City of Brooklyn Park Zoning Ordinance.

(Ord. 2001-955, passed 8-13-01; Am. Ord. 2009-1104, passed 9-8-09; Am. Ord. 2016-1207, passed 9-12-16)

CHAPTER 107: GRAFFITI

Section

§ 107.01 FINDINGS AND PURPOSE.

(A) The City Council of the city is enacting this chapter to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property.

(B) The Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti perpetrators are often associated with other criminal activities, including violent crimes. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

(C) The City Council intends, through the adoption of this chapter, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement of public and private property. The council does not intend for this chapter to conflict with any existing anti-graffiti state laws or "criminal damage to property" laws.

(Ord. 2002-972, passed 5-13-02)

§ 107.02 DEFINITIONS.

For the purposes of this chapter, the following words will have the meaning provided to them, except where the context clearly indicates a different meaning.

AEROSOL PAINT CONTAINER . Any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

BROAD-TIPPED MARKER . Any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.

ETCHING EQUIPMENT . Any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.

GRAFFITI . Any unauthorized inscription, word, figure, painting, symbol, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or despite advance authorizations otherwise deemed a public nuisance by the City Council.

GRAFFITI IMPLEMENT . An aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

PAINT STICK OR GRAFFITI STICK . Any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-fourth of an inch in width.

(Ord. 2002-972, passed 5-13-02)

§ 107.03 PROHIBITED ACTS.

(A) *Defacement*. It is unlawful for any person to apply graffiti to any natural or man-made surface on any publicly owned property or, without the permission of the owner or occupant, on any privately owned property.

(B) *Possession of graffiti implements*. Unless otherwise authorized by the owner or occupant, it is unlawful for any person to possess any graffiti implement while:

(1) Within 200 feet of any graffiti located in or on a public facility, park, playground, swimming pool, recreational facility, bridge, or other public building or structure owned or operated by a governmental agency; or

(2) Within 200 feet of any graffiti located in any public place or on private property, between the hours of 10:00 p.m. and 5:00 a.m.

(Ord. 2002-972, passed 5-13-02) Penalty, see § 107.99

§ 107.04 GRAFFITI AS NUISANCE.

(A) *Declaration*. The existence of graffiti on public or private property in violation of this chapter is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this chapter.

(B) *Duty of property owner*. It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.

(C) *Repeat violations*. If a property is subject to three or more occurrences of graffiti within a year, application of anti-graffiti material of a type and nature that is acceptable to the city may be required for each of the publicly viewable surfaces after notification by the city, or imposed during improvements or construction activities to the site as determined by the city.

(Ord. 2002-972, passed 5-13-02) Penalty, see § 107.99

§ 107.05 REMOVAL OF GRAFFITI.

(A) *By perpetrator*. The city may require any person applying graffiti on public or private property to either remove or pay for all costs for removal of the graffiti within 24 hours after notice by the city or property owner. The removal must be performed in a manner prescribed by the city, with materials and colors compatible with existing surfaces, and to a comparable or improved condition before the graffiti application as determined by the city. Where graffiti is applied by a person under 18 years old, the parents or legal guardian will also be responsible for such removal or for payment for the costs of removal. Failure of any person to remove graffiti or pay for the removal will constitute an additional violation of this chapter.

(B) *By property owner or city*. In lieu of the procedure set forth in division (A), the city may order that the graffiti be removed by the property owner or any person who may be in possession or who has the right to possess such property, pursuant to the nuisance abatement procedure herein. Graffiti removal and corrections must be performed with materials and colors compatible with existing surfaces as determined by the city. If the property owner or responsible party fails to remove offending graffiti within the time specified by the city, the city may commence abatement and cost recovery proceedings for the graffiti removal in accordance with this chapter.

(Ord. 2002-972, passed 5-13-02)

§ 107.06 ABATEMENT PROCEDURE.

(A) *Abatement by city*. If the owner, occupant, or other responsible party does not comply with the notice within the time specified, the city may abate the public nuisance.

(B) *Notice and Hearing*. The following notification must be conducted prior to city abatement of the public nuisance. Whenever it is determined that a public nuisance is being maintained or exists on a property, the Manager or authorized designee must give ten day's written notice through service by mail, by posting a notice on the property, or by personal delivery to the owner of or person in control of the property on which the public nuisance is located. When the property is occupied, service upon the occupant is deemed service upon the owner. Where the property is unoccupied or abandoned, service may be by mail to the last known owner of record of the property or by posting on the property. The notice must state:

(1) A description of the public nuisance;

(2) That the public nuisance must be corrected within ten days of the service of the notice;

(3) That if the public nuisance is not properly removed or corrected as ordered, the public nuisance will be abated by the city and the costs of abatement will be specially assessed to the property taxes;

(4) That the owner of or person in control of the property on which the public nuisance is located may in writing request a hearing before the City Manager or authorized designee.

(C) *Hearing, action*. If a hearing is requested during the ten-day period, the City Manager or authorized designee must promptly schedule the hearing, and no further action on the abatement of the public nuisance may be taken until the manager's decision is rendered. At the conclusion of the scheduled hearing, the manager or authorized designee may cancel the notice to remove or correct the public nuisance, modify the notice, or affirm the notice to remove or correct the public nuisance. If the notice is modified or affirmed, the public nuisance must be disposed of in accordance with the city's written order.

(D) *Summary abatement*. The enforcing officer may provide for abating a public nuisance without following the procedure required in division (B) when:

(1) There is an immediate threat to the public health or safety;

(2) There is an immediate threat of serious property damage;

(3) A public nuisance has been caused by private parties on public property; or

(4) Any other condition exists that violates state or local law and that is a public health or safety hazard.

A reasonable attempt must be made to notify the owner, occupant, or other responsible party of the intended action and the right to appeal the abatement and cost recovery at the next regularly scheduled City Council meeting.

(E) *Cost recovery*. The owner of property on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, is personally liable to the city for the cost of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, an appropriate official will prepare a bill for the cost and mail it to the owner or other responsible party. The amount is immediately due and payable to the city.

(F) *Assessment*. If the cost, or any portion of it, has not been paid within 30 days after the date of the bill, the council may certify the unpaid cost against the property to which the cost is attributable in accordance with the process set forth in § 94.07 of this Code.

(Ord. 2002-972, passed 5-13-02)

§ 107.99 PENALTIES.

(A) Any violation of this section is a misdemeanor, punishable in accordance with state law.

(B) Any violation of this chapter may be subject to civil penalties in accordance with Chapter 37 of the city code.

(C) This chapter is not intended to prohibit a private property owner from seeking additional penalties or remedies.

(Ord. 2002-972, passed 5-13-02)

CHAPTER 108: STORM SEWER UTILITY

Section

§ 108.01 STATUTORY AUTHORITY.

M.S. § 444.075 ("the Act"), authorizes cities to impose just and reasonable charges for the use and availability of storm sewer facilities ("charges"). By this chapter, the city elects to exercise such authority.

(Ord. 2002-981, passed 11-25-02)

§ 108.02 FINDINGS AND PURPOSE.

In providing for such charges, the following findings and determinations are made:

(A) In the exercise of its governmental authority and in order to promote the public health, safety, convenience and general welfare, the city has constructed, operated and maintained a storm sewer system (the "system"). This chapter is adopted in the further exercise of such authority.

(B) The system, as constructed, heretofore has been financed and paid for through the imposition of special assessments and ad valorem taxes. Such financing methods were appropriate to the circumstances at the time they were used. It is now necessary and desirable to provide an alternative method of recovering some or all of the future costs of operating, maintaining and improving the system through the imposition of charges as provided in this section.

(C) In imposing charges, it is necessary to establish a methodology that undertakes to make them just and equitable. Taking into account the status of completion of the system, past methods of recovering system costs, and other relevant factors, it is determined that it would be just and equitable to assign responsibility for some or all of the future costs of operating, maintaining and improving the system on the basis of the expected storm water runoff from the various parcels of land within the city.

(D) Assigning costs and making charges based upon expected typical storm sewer runoff cannot be done with mathematical precision but can only be accomplished within reasonable and practical limits based upon use.

(Ord. 2002-981, passed 11-25-02)

§ 108.03 SYSTEM ESTABLISHED

A city storm sewer system is hereby established. The system consists of all storm sewer conduits, manholes and catch basins, ditches and ponds within the public right-of-way and storm sewer conduits, manholes and catch basins in public purpose easements as of January 1, 2003, and any additional storm sewer facilities acquired by the city in the future.

(Ord. 2002-981, passed 11-25-02)

§ 108.04 RATES AND CHARGES.

(A) *Land use rate calculation*. Rates and charges for the use and availability of the system are to be determined through the use of a "residential equivalent factor" which is defined as the ratio of the average volume of surface water runoff coming from one acre of land subjected to a particular use, to the average volume of runoff coming from one acre of land subject to typical single-family residential use within the city during a standard rainfall event. All developed single-family parcels shall be considered to have an acreage of one-third acre per unit. Calculations for stormwater utility rates for various land uses are based upon their residential equivalent factor (REF). The REF values for various land uses are as follows:

Land Use Class	***REF***
Single Family Residential	1.00
Townhouse/Two-Family Residential	1.20
Multi-Family Residential (Four-plex and up)	1.30
Business	2.10
Industrial	2.40
School/Church	1.00

(B) *Calculation of fees*. The service charge to be billed each billing unit shall be a fair and equitable share of the total costs of the system. Further, service charges shall be apportioned to similar land uses of property similarly. From time to time the City Council shall adopt a resolution establishing a class charge rate calculation table for all billing units. These quarterly charges shall be listed in the City Code Appendix fee resolution table.

(C) *Other land uses*. Other land uses not listed in the City Code Appendix class charge rate calculation table are to be classified by the City Manager or authorized designee, by assigning them to the classes most nearly like the listed uses, from the standpoint of probable hydrologic response. Appeals from the City Manager or authorized designee's determination of the proper classifications may be made to the City Council in the same manner as other appeals from administrative determinations.

(D) *Adjustment of charges*. The City Council may by resolution, from time to time, adopt policies providing for the adjustment of charges for parcels or grounds of parcels, based upon data supplied by affected property owners, demonstrating an actual runoff volume substantially different from the calculation being used for the class of parcel or parcels. The adjustment may be made only after receiving the recommendation of the City Manager or authorized designee and may not be made effective retroactively. If the adjustment would have the effect of changing the calculation for all or substantially all of the land uses in a particular classification, however, such adjustment must be accomplished by amending the class charge rate calculation table found within the City Code Appendix.

(E) *Excluded lands*. A charge for system availability of service will not be made against land which is either (i) public streets right-of-way, or railroad road right-of-way or (ii) vacant and unimproved, or fallow, with substantially all of its surface having vegetation as ground cover, and (iii) city owned land.

(G) *Supplying information*. The owner, occupant or person in charge of any premises must supply the city with such information as the city may reasonably request related to the use, development and area of the premises. Willful failure to provide such information or to falsify it is a violation of this subsection.

(H) *Estimated charges*. If the owner, occupant or person in charge of any premises fails or refuses to provide the information requested, as provided above, the charge for such premises must be estimated and billed in accordance with such estimate, based upon information then available to the city.

(I) *Billings and collections*. Storm sewer service charges shall be placed on the utility accounts of property for the use and availability of the system and are payable quarterly in accordance with usual and customary practices in rendering of water and sanitary sewer bills.

(J) *Penalties and remedies for delinquency or default in paying billings*. Penalties and remedies for late payments or non-payment of billings are the same as those applicable to billings rendered for water and sanitary sewer service. In the event a bill becomes delinquent, the City Council may cause the delinquent charges to become a lien against the property served by certifying to the Hennepin County Taxpayers Services Division the amount of such delinquent bill in accordance with the Act.

(Ord. 2002-981, passed 11-25-02)

§ 108.05 USE OF REVENUES

Revenues received from charges are to be placed in a separate storm sewer utility enterprise fund and used to pay the normal, reasonable and current costs of operating, maintaining, and improving water quality within the system. Revenues from time to time received in excess of such costs may be used to finance improvements to and betterments of the storm sewer utility and other utility enterprise funds.

(Ord. 2002-981, passed 11-25-02)

CHAPTER 109: STREET/SIGNAL LIGHTING SYSTEM

Section

109.01 STATUTORY AUTHORITY.

M.S. Chapter 429 ("the Act"), authorizes cities to impose charges for the operation of a street/signal lighting system. By this chapter, the city elects to exercise such authority.

(Ord. 2002-983, passed 11-25-02)

109.02 SYSTEM ESTABLISHED.

A city street/signal lighting system is established. The system consists of all street lighting facilities, whether owned by the city or other, for which the city purchases and supplies electrical energy. A street/signal lighting service district is hereby established. The district includes all property within the city.

(Ord. 2002-983, passed 11-25-02)

109.03 RATES AND CHARGES:

(A) *Billing unit*. Service charges for parcels of land shall be based on land use. The billing unit for residential parcels zoned or used as residential shall be a dwelling unit; single-family residential unit or townhouse/two family residential unit or multi-family residential unit. The billing unit for parcels zoned or used as other zoning classifications shall be street front lineal foot.

(B) *Calculation of fees*. The service charge to be billed each billing unit shall be a fair and equitable share of the total costs of the system. Further, service charges shall be apportioned to similar classes of property similarly. From time to time the City Council shall adopt a resolution establishing a class charge rate calculation table for all billing units. These quarterly charges shall be listed in the City Code Appendix fee resolution table.

(C) *Billings and collections*. Street/signal lighting service charges shall be placed on the utility accounts of all property and are payable quarterly in accordance with usual and customary practices in rendering of water and sanitary sewer bills.

(D) *Adjustment of charges*. If an owner or person responsible for paying the street/signal lighting service charge questions the correctness of such a charge, such person may have the determination of the charge reviewed by written request to the City Manager. Such request shall be made within 30 days of the mailing of the bill in question. The City Manager shall have the authority to recompute the charge.

(E) *Penalties and remedies for delinquency or default in paying billings*. Any street/signal lighting service charges in excess of 90 days past due on October 1 of any year may be certified to the Hennepin County Taxpayer Services Manager for collection with real estate taxes as a special assessment. An administrative charge of $25 shall be added to each street/signal lighting service charge so certified. In addition, the city may bring a civil action or to take other legal remedies to collect unpaid charges.

(Ord. 2002-983, passed 11-25-02)

TITLE XI: BUSINESS REGULATIONS

Chapter

CHAPTER 110: GENERAL BUSINESS REGULATIONS

Section

General Provisions

Cross-reference:

Mechanical and plumbing contractors, see §§ 103.75 et seq.

Public and private swimming pools, see Ch. 105

Sewer installers, see §§ 99.60 et seq.

GENERAL PROVISIONS

§ 110.01 APPLICATION OF REGULATIONS.

(A) *Compliance required.* It is unlawful for a person either directly or indirectly to engage in any business or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license or permit is required by any provision of this title or any other law or ordinance of this municipality, without a license or permit therefor being first procured and kept in effect at all times as required by any such provision of this title or any other law or ordinance of this municipality.

(B) *One act constitutes doing business.* For the purpose of this title a person is deemed to be engaged in any business for which a license or permit is required, and thus subject to the requirements of this title when that person does within this municipality one act of:

(1) Selling any goods or service for which a license is required;

(2) Soliciting such business or offering such goods or services for sale or hire;

(3) Acquiring or using any vehicle or any premises in this municipality for such business purposes.

(C) *Agents responsible for obtaining license.* The agents or other representatives of non-residents of this municipality who are

doing business in this municipality shall be personally responsible for the compliance with the provisions of this title by their principals and of the businesses they represent.

(D) *Separate license for branch establishments.* A license must be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under any provision of this title are not be deemed to be a separate place of business or branch establishment.

(E) *No license required for mere delivery.* No license is required of any person for any mere delivery of any property purchased or acquired in good faith from the person at that person's regular place of business outside the corporate limits of this municipality where no intent by such person is shown to exist to evade the provisions of this title.

('72 Code, § 400:00) Penalty, see § 10.99

§ 110.02 APPLICATION FOR LICENSES.

A person required to procure any permit, license, or transfer under the provisions of this title or any other law or ordinance of this municipality must submit an application for the license to the City Manager or Manager's designee in writing. The application must conform to the following provisions:

(A) Be a written statement upon forms provided by the City Manager or Manager's designee such form to include an affidavit to be sworn to by the applicant before a person authorized to administer an oath.

(B) Contain all information necessary to comply with this title under which the license is required and any other information required by the City Manager or Manager's designee.

(C) Contain, in addition to all other matters required by ordinance or by law to be shown, the following facts:

(1) Name and address of applicant.

(2) Purpose for which license or permit is asked.

(3) As to license any occupation or permit the doing of any act, the place where such occupation or act is to be carried on or done.

(4) The length of time the licenses or permits are to cover.

(D) All questions on the application blank must be answered and all information required must be furnished. Any application for a license made by an individual owner must be signed and sworn to by such owner; if made by a partnership, it shall be signed and sworn to by one of the partners; and if by a corporations by one of the duly elected officials of the corporation.

('72 Code, § 400:03)

§ 110.03 FEES; BONDS AND INSURANCE.

(A) *Generally.* An applicant for any permit, license or transfer of a license to be issued or granted by this municipality must pay the full amount of the permit fee, license fee, or transfer fee required by this code and other ordinance of this municipality, and must file with the Clerk the bond, insurance policy, or certificate therefor, and certified copy of a state license, if required for license.

('72 Code, § 400:06)

(B) *Fees.* Except as otherwise specifically stated in the regulations for specific licenses or permits, the fees for the various licenses, permits and transfers are as fixed or estimated in this title or as otherwise provided in this code.

('72 Code, § 400:09)

(C) *No split fee.* The fee for each license issued is the full amount provided in this code or other applicable ordinance and no reduction in the amount of the fee is to be made because part of the license year has elapsed prior to the date the license is issued, unless specifically stated.

('72 Code, § 400:12)

(D) *Permit fee doubled.* Should any person, firm or corporation begin any construction, installation, alteration or repair for which a permit from this municipality is required, without having secured the necessary permit therefor, either previous to or during the day of the commencement of any such work, or on the next succeeding day when such work is commenced an a Saturday afternoon or on a Sunday or a holiday, that person, firm or corporation will, when subsequently securing such permit be required to pay double the fee provided for such permit, and shall be subject to all the penal provisions of this code or other applicable ordinances.

('72 Code, § 400:15)

§ 110.04 LICENSE BONDS.

If the provisions under which any license is to be issued require the licensee to furnish a bond, the bond must be duly executed by the licensee and a corporate surety, and must be furnished to the City Clerk at the time the application is filed or as soon thereafter as the Clerk requests. The bond must be in such amount and with such penalty provisions as required by the provision and must be approved as to form and execution by the Attorney and as to surety and amount by the City Clerk. Such bonds may be in form as to terminate with the annual license period or may be in form so as to provide for automatic renewal in the event the license is renewed.

('72 Code, § 400:18)

§ 110.05 PROCEDURE FOR ISSUANCE OF LICENSES.

(A) On receipt of an application for a license the City Manager or Manager's designee must transmit the same together with license bond and copy of receipt for license fee to the Chief of Police or other department responsible therefor, who must cause investigation to be made of the qualifications of the applicant and the City Manager or Manager's designee must determine: (1) whether the premises where the licensed activity is located is in compliance with all laws, ordinances and regulations applicable to the property; and (2) whether the applicant has complied with all requirements of the ordinance under which the license is to be issued and which requirements are prerequisites to the issuance of the license. For purposes of this section, the term ***PREMISES*** means the address of the location where the licensed activity takes place. Unless the subdivision of the ordinance pursuant to which the license is to be issued requires issuance of the license by the Council, the City Manager or Manager's designee shall issue the license upon determination that the prerequisites have been complied with, but if the City Manager or Manager's designee shall have determined that the prerequisites have not been complied with the City Manager or Manager's designee shall deny the application for issuance of the license. If any ordinance requires issuance of a license by the Council, the application must be referred, together with a report of the investigation and determination with respect to the applicant and the applicant's compliance with the requirements of the ordinance, to the Council. The Council must thereupon consider the report and findings and may grant or deny the license. The applicant for any license which has been denied by the City Manager or Manager's designee may appeal the decision of the City Manager or Manager's designee to the Council by filing, with the City Manager or Manager's designee, within ten days after receipt of notice of the denial, a request for review by the Council of such determination by the City Manager or Manager's designee. The City Manager or Manager's designee shall thereupon refer the request to the Council at its next regular meeting, at which time the Council shall hear the applicant and review the determination of the City Manager or Manager's designee and may grant or deny the license.

(B) Upon determination of the Council that a license is to be issued the determination must be transmitted to the City Manager or Manager's designee who shall issue the license certificate in duplicate under the municipal corporate seal and deliver one copy to the applicant and retain the other in the license book as a part of the official records.

('72 Code, § 400:21) (Am. Ord. 2004-1014, passed 5-10-04)

§ 110.06 CERTIFIED COPIES.

A record or a certified copy thereof is prima facie evidence to the person therein named and all others, as to the information therein contained.

('72 Code, § 400:24)

§ 110.07 UNLAWFUL LICENSES.

A license or permit issued in any other manner than that herein prescribed is of no effect.

('72 Code, § 400:27)

§ 110.08 CONTENTS OF LICENSE.

Each license issued under this title must state upon its face the following:

(A) Name of the licensee and any other name under which the business is to be conducted.

(B) The name and address of each business so licensed as well as mailing address if different from business address.

(C) The amount of license fee.

(D) The date of issuance and expiration thereof.

(E) Other information as the City Manager or Manager's designee determines.

('72 Code, § 400:30)

§ 110.09 LICENSE PERIOD.

All permits, licenses, or transfers issued under any provision of this title shall terminate on December 31 of the calendar year in which issued unless a different termination date with respect to specific licenses is specifically provided with respect to the permit, license or transfer.

('72 Code, § 400:33)

§ 110.10 RENEWAL LICENSE PROCEDURE.

Applications for renewal of any license must be made to the City Manager or Manager's designee on forms provided by the City Manager or Manager's designee, and must contain any information required for renewal of the license by this title under which the license is to be issued, and additional information as the City Manager or Manager's designee requires.

('72 Code, § 400:36)

§ 110.11 DUPLICATE AND REPLACEMENT LICENSE PROCEDURE.

A duplicate license certificate or tag must be issued by the City Manager or Manager's designee to replace any license certificate or tag previously issued which has been lost, stolen, defaced or destroyed, without any wilful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to that fact and paying to the City Manager or Manager's designee the required fee.

('72 Code, § 400:39)

§ 110.12 REBATE OF FEE.

No rebate or refund of any license fee or part thereof shall be made by reason of non-use of the license, or by reason of a change in location or business rendering the use of the license ineffective, provided that the City Manager or Manager's designee has authority to refund a license fee collected through an error, or in cases where the application is denied by the City Manager or Manager's designee or the Council.

('72 Code, § 400:42)

§ 110.13 DUTIES OF LICENSEE.

Every licensee and permittee under any provision of this title or other applicable ordinances has the duties set forth in the divisions

which follow:

(A) *Permit inspection.* Permit all reasonable inspections of the licensee's or permittee's business and examinations of the licensee's or permittee's books and records by such authorities so authorized by law.

(B) *Comply with governing law.* Ascertain and at all times comply with all laws, ordinances, and regulations applicable to such business.

(C) *Cease business.* Refrain from operating the licensed business after expiration of licensee's license and during the period the license is revoked or suspended.

(D) *License displayed.* All licenses, tags, plates, or other method of identification authorized by this title or other applicable ordinances must be kept on display at a conspicuous place on the licensed premises, vehicles, or device, or where neither premises, vehicle or device are licensed, on the person of the licensee, or in the case of licenses for billboards or signboards, at the place of business of the licensee.

(E) *Unlawful possession.* Must not loan, sell, give, or assign, to any other person, nor allow any other person to use or display or to have in the person's possession any license or insignia which has been issued to the licensee.

(F) *Inspections.* All persons licensed hereunder are subject to proper periodic inspections; so far as to give the police officers and other duly authorized inspectors of this municipality the right and power at all times to enter upon their premises for the purpose of ascertaining the manner in which the business is being conducted.

('72 Code, § 400:45) (Am. Ord. 1992-696, passed 5-11-92; Am. Ord. 2004-1013, passed 5-10-04)

§ 110.14 CHANGE OF LOCATION OF LICENSED PREMISES.

A licensee or permittee does not have the right to change the location of the licensed premises except upon the approval of the City Manager or Manager's designee if the license is issued by the Manager or Manager's designee, or upon the approval of the Council if the license is issued by the Council. Application for renewal must be made in writing in such form as is prescribed by the City Manager or Manager's designee and must be accompanied by the required removal fee.

('72 Code, § 400:48)

§ 110.15 TRANSFER OF LICENSE.

A licensee does not have the right to transfer the licensee's license to any other person unless specifically authorized by this title or pursuant to which the license was issued.

('72 Code, § 400:51)

§ 110.16 ENFORCEMENT.

(A) *Inspections.* It is the duty of the municipal Health Office or the Environmental Health Specialist to inspect all premises licensed hereunder for the purpose of determining any violation of law relating to health. It is the duty of the municipal police officers to inspect and examine all premises, businesses and enterprises subject to license, or which have been licensed hereunder, and the City Manager has the right to direct the Health Officer, any police officer, or any other appropriate officer to make such inspections at all reasonable times.

(B) *Sealing of unlicensed, defective, or unsafe machines or devices and affixing license insignia.* A food vending machine, cigarette vending machine, pinball machine, childrens' amusement device, mechanical amusement device, or other amusement device which is defective or unsafe, or which is licensed and has no license tag or other license insignia affixed as required by law, or is required to be licensed hereunder and such machine or device is not currently licensed, may be sealed by a tape or wire to prevent its continued use. The tape or tag attached to the seal must state that the machine or device is not to be used.

(C) *Removing seal, using machine prohibited.* It is unlawful to remove or deface a seal affixed under these provisions except under the direction of an authorized agent of this municipality. It is unlawful to use any machine or device on which a seal has been affixed under the provisions hereof.

('72 Code, § 400:54) Penalty, see § 10.99

§ 110.17 TERMINATION OF LICENSE.

At any time that the City Manager determines that a person licensed under this title or other ordinance of the municipality has failed to comply with any requirement of law or with any provision of this title, the City Manager must request the City Clerk to notify the licensee in writing of the violation. The notice is to be delivered by the U.S. Mail or personally as the City Manager may determine and deposit of the notice in the U.S. Mail, addressed to the address stated on the license application, constitutes service of the notice. If the person cannot be otherwise found the notice may be posted on the premises licensed. The notice must require compliance with the provision of law, code, or ordinance specified within a reasonable time to be specified by the City Manager. Upon expiration of the time, unless the licensee has requested a hearing in writing, the City Manager, in the event that the license involved has been issued by the City Manager or Manager's designee, may terminate the license, or in the event that the license has been issued by the Council, the City Manager must report the matter to the Council and the Council may thereafter terminate the license, subject to compliance with any procedure prescribed by the provisions of the ordinance pursuant to which the license or permit was issued.

('72 Code, § 400:57)

§ 110.18 HEARING.

In the event that a hearing is requested by the licensee the City Manager must set a time for the hearing not less than ten days and not more than 20 days after request, at which time the City Manager is to hear all testimony offered by the licensee, and must inform the licensee of all information upon which alleged violation of law by the licensee has been determined. If the license has been issued by the Council the hearing must be conducted by the Council. On completion of the hearing the City Manager or Council, as the case may be, may make a final order suspending or terminating the license in question. Upon the entry of any such order by the City Manager, the licensee may appeal the determination of the City Manager to the Council by filing request for such appeal with the City Clerk within ten days after receipt of notification of the order of the City Manager, and the Council must thereupon promptly hear the licensee and review the determination of the City Manager and make its final order sustaining or modifying the determination of the City Manager.

('72 Code, § 400:60)

§ 110.19 [RESERVED].

§ 110.20 REVOCATION OF LICENSES.

Violation by a licensee of any provision of this code or state law, regulating, prescribing conditions, or establishing requirements relative to licenses held by such a licensee is grounds for revocation of the license.

('72 Code, § 1110:00)

FEES, CHARGES AND RATES

§ 110.35 FEES, CHARGES AND RATES AUTHORIZED AND DEFINED.

The fees, charges and rates for the purposes set forth in this title of this code for licenses, permits and municipal services shall be in the amounts established in the fee resolution set forth in the Appendix to this code. Reference to the amounts set forth therein in other portions of this code or in other ordinances of the city may be made in such terms as "required fee," "established fee," "required license fee," "license fee," and "license fee in the required amount," without specific reference to this chapter, in which event the amounts set forth in the fee resolution are applicable.

('72 Code, § 500:00)

§ 110.36 PRIORITY OF APPLICATION.

If fees, charges and rates are set forth specifically in parts of this code other than this title or in other ordinances of the city which are now in effect, but have not been set forth in this title, in that event, the fees, charges and rates thereby specifically set forth shall be effective for all purposes. In the event that such amounts shall appear in other places in this code or in other ordinances of the city, but shall appear in this title, the amounts appearing in this title shall supersede the others.

('72 Code, § 500:05)

§ 110.37 BUSINESS LICENSE AND PERMIT FEE SCHEDULE.

The fees, charges and rates for business licenses and permits, the duration or term thereof, and the conditions applied thereto, shall be as established by the fee resolution set forth in the Appendix to this code.

('72 Code, § 500:10) (Am. Ord. 1997-843, passed 3-24-97; Am. Ord. 1997-845, passed 4-28-97; Am. Ord. 1998-873, passed 4-13-98)

§ 110.38 LATE PAYMENT.

(A) *No penalty.* No penalty for the late payment of any license shall be incurred by any licensee provided the owner or the owner's agent makes application for the renewal of the existing license to the City Clerk or Clerk's designee and includes therein the payment of the required fee therefor prior to the expiration date of the license.

(B) *Penalty for late payment.* Every person whose licensed trade, business, profession, activity or privilege is licensed by the city, other than one who has been closed down and who has not operated such activity in the city after expiration of the licensing year, shall pay to the City Clerk the regular license fee and in addition thereto the following penalty for late application for a license.

(1) One to 15 days late a 50% penalty;

(2) Sixteen to 30 days late a 100% penalty;

(3) After expiration of 30 days from the due date, the activity for which a license is required shall cease and the City Manager may recommend that no new license or permit for such activity shall be considered until the owner of the business personally appears before the City Council. If a new license or permit is approved, the fee will consist of the amount set forth for new licenses and permits, plus the late penalty fee.

(C) *Late payment of the license fee with penalty is no bar to prosecution for operating without a license.* The late payment of the license fee along with the penalty set forth therein is no bar to any prosecution by the city for operating any licensed trade, business, profession, activity or privilege within the city without a license therefor.

('72 Code, § 500:15) (Ord. 1975-181(A), passed 1-27-75; Am. Ord. 1986-540(A), passed 8-18-86)

§ 110.39 PRO RATE FEES; REFUNDS.

Licenses issued for a stated period of one year or for some other stated period of time shall be pro rated over the period of the license. The pro ration of the fee shall be on a quarterly basis and any unexpired fraction of a quarter will be counted as a complete quarter. In no event shall there be any proration if the prorated fee charged would be less than $25.

('72 Code, § 500:20) (Ord. 1989-623(A), passed 3-6-89)

CHAPTER 111: ADULT ORIENTED BUSINESSES

Section

§ 111.01 LICENSES REQUIRED.

An establishment, including a business operating at the time this chapter becomes effective, operating or intending to operate an adult only entertainment business, must apply for and obtain a license from the city:

(A) A person is in violation of the city code if they operate an adult only entertainment business or other sections of the city code without a valid license, issued by the city.

(B) An application for a license must be made on a form provided by the city. 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 marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(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 the law by the Environmental Health Division, Fire Department, and Building Official.

(D) (1) Application for license shall be made only on the forms provided by the city. Four complete copies of the application shall be furnished to the office of the City Clerk containing the address and legal description of the property to be used; the names, addresses and phone numbers of the owner and lessee, if any, and the operator or manager; the name, address, and phone number of two persons who are residents of the State of Minnesota, and who may be called upon to attest to the applicant's and manager's-operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information as to the time, place, and nature of such crime or offense including the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as and regarding credit which has been extended for the purposes of construction, equipping, maintaining, operating, or furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance, and operation of the business.

(2) If the application is made on behalf of a corporation, joint business venture, partnership, or any legally constituted business association, it must submit along with its application, accurate and complete business records showing the names and addresses of all individuals having an interest in the business, including partners, officers, owners, and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business and, in the case of a corporation, the names and addresses of all officers, general managers, and members of the board of directors as well as any creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation.

(3) All applicants must furnish to the city, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition, or maintenance of the enterprise.

('72 Code, § 422:00) (Ord. 1992-689, passed 3-23-92) Penalty, see § 10.99

§ 111.02 ISSUANCE OF LICENSE.

(A) The Chief of Police and City Clerk may recommend approval of the issuance of a license by the city to an applicant within 90 days after receipt of an application unless they find one or more of the following to be true:

(1) Applicant(s) or manager is under 18 years of age.

(2) Applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(3) Applicant(s) or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating an adult only entertainment business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(4) Applicant(s) is residing with a person who has been denied a license by the city or any other Minnesota municipal corporation to operate an adult only entertainment business within the preceding 12 months, or residing with a person whose license to operate an adult only entertainment business has been revoked within the preceding 12 months.

(5) The premises to be used for the adult only entertainment business has not been approved by the Environmental Health Division, Fire Department, Zoning/Planning Department and the Building Official as being in compliance with applicable laws and ordinances; such inspections must be completed within 30 days from the date the application was submitted, provided that the application contains all of the information required by this chapter. If the application is deficient, the inspections shall be completed within 30 days from the date the deficiency has been corrected.

(6) The license fee required by § 110.37 has not been paid.

(7) Applicant(s) has been employed in an adult only entertainment business in a managerial capacity within the preceding 12 months and has demonstrated that they are unable to operate or manage an adult only entertainment business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(8) Applicant(s) or applicant's spouse has been convicted of a crime involving any of the following offenses:

(a) Any sex crimes as defined by M.S. §§ 609.29 through 609.352 inclusive or as defined by any ordinance or statute in conformity therewith.

(b) Any obscenity crime as defined by M.S. §§ 617.23 through 617.229 inclusive, or as defined by any ordinance or statute in conformity therewith 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;

2. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or

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 has 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 division (A) of this section may qualify for an adult only entertainment business license only when the time period required by division (A) of this section has elapsed.

(D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult only entertainment business. The license must be posted in a conspicuous place at or near the entrance to the adult only entertainment business so that it may be easily read at any time.

(E) The City Council must act to approve or disapprove the license application within a reasonable time after receipt of all information relating to zoning and after completion of all code requirements, provided that the application contains all of the information required by this chapter. If the application is deficient, the Council must act on the application within 120 days from the date that the deficiency has been corrected.

('72 Code, § 422:05) (Ord. 1992-689, passed 3-23-92; Am. Ord. 2004-1013, passed 5-10-04)

§ 111.03 INVESTIGATION FEE.

(A) At the time of each original application for a license, the applicant must pay a minimum investigating fee. This minimum fee shall be $500 per person on the application, and additional direct costs associated with the investigation will be billed to the applicant(s). The minimum investigating fee shall not be subject to refund. If the expenses of the investigation relating to any application exceed the minimum investigating fee, the city shall notify the applicant(s) of this fact and shall require the applicant(s) to pay an additional investigating fee which the City Manager deems necessary to complete its investigation of the applicant(s). The applicant(s) must pay such an additional investigating fee within five days of being so notified. If the additional investigating fee is not paid within the five-day period, the city shall discontinue consideration of the application.

(B) Each application must contain a provision on the application in bold print indicating that any withholding of information or the providing of false or misleading information will be grounds for denial or revocation of a license. Any changes in the information provided on the application or provided during the investigation must be brought to the attention of the City Council by the applicant or licensee. If the changes take place during the investigation, the data must be provided to the Chief of Police or the City Clerk in writing and they must report the changes to the City Council. Failure to report the changes by the applicant(s) or the licensee may result in a denial or revocation of a license.

('72 Code, § 422:10) (Ord. 1992-689, passed 3-23-92)

§ 111.04 LICENSE FEES.

(A) All license fees as established by the Council from time to time in the Appendix to this code, must be paid at the time of filing the application.

(B) In the case of licenses granted for premises wherein construction is not yet completed, the Council may grant the license but the Clerk must not issue the license until the construction is completed in accordance with the plans and specifications approved by the Council. The fee for the license shall be one-half of the license fee from the date of approval until business operations actually commence on the licensed premises. When business operations commence, the full fee shall become effective pro rated on a quarterly basis. In no event shall a reduced fee apply for a licensed establishment under construction for a period of longer than 12 months from the date of Council approval, but the full fee must be paid for the balance of the construction period.

('72 Code, § 422:15) (Ord. 1992-689, passed 3-23-92)

§ 111.05 INSPECTION.

(A) Applicant(s) or licensee(s) must permit representatives of the Police Department, Environmental Health Division, Fire Department, and Housing and Building Inspection Department to inspect the premises of an adult only entertainment 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 an adult only entertainment business or their agent or employee commits an offense if they refuse to permit a lawful inspection of the premises by a representative of the Police, Environmental Health Division, Building or Fire Department at any time it is occupied or open for business.

('72 Code, § 422:20) (Ord. 1992-689, passed 3-23-92) Penalty, see § 10.99

§ 111.06 EXPIRATION OF LICENSE.

(A) Each license expires one year from the date of issuance and may be renewed only by making application as provided in § 111.01. Application for renewal should be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(B) If the city denies renewal of a license, the applicant must not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if a least 90 days have elapsed since the date denial became final.

('72 Code, § 422:25) (Ord. 1992-689, passed 3-23-92)

§ 111.07 SUSPENSION.

(A) The city may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any provisions of this chapter.

(2) Engaged in use of alcoholic beverages while on the adult only entertainment business premises.

(3) Refused to allow an inspection of the adult only entertainment business premises as authorized by this code.

(4) Knowingly permitted gambling by any person on the adult only entertainment business premises.

(5) Demonstrated inability to operate or manage an adult only entertainment business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(B) A suspension by the city must be preceded by written notice to the licensee and a public hearing. The notice must give at least ten days notice of the time and place of the hearing and must state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

('72 Code, § 422:30) (Ord. 1992-689, passed 3-23-92)

§ 111.08 REVOCATION.

(A) The city may revoke a license if a cause of suspension in § 111.07 occurs and the license has been suspended within the preceding 12 months.

(B) The city may revoke a license if it determines that:

(1) The licensee gave false or misleading information in the material submitted to the city during the application process.

(2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises.

(3) A licensee or an employee has knowingly allowed prostitution on the premises.

(4) A licensee or an employee knowingly operated the adult only entertainment business during a period of time when the licensee's license was suspended.

(5) A licensee has been convicted of an offense listed in § 111.02 for which the time period required 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 § 111.02 for which a conviction has been obtained, and the person or persons were employees of the adult only entertainment 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 or masturbation to occur in or on the licensed premises.

(C) The fact that a conviction is being appealed has no effect on the revocation of the license.

(D) Subdivision (B)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(E) If the city revokes a license, the revocation must continue for two years and the licensee must not be issued an adult only entertainment business license for two years from the date revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(F) A revocation by the city must be preceded by written notice to the licensee and a public hearing. The notice must give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

('72 Code, § 422:35) (Ord. 1992-689, passed 3-23-92; Am. Ord. 2004-1013, passed 5-10-04)

§ 111.09 TRANSFER OF LICENSE.

A licensee must not transfer the license to another, nor must a licensee operate an adult only entertainment business under the authority of a license at any place other than the address designated in the application.

('72 Code, § 422:40) (Ord. 1992-689, passed 3-23-92) Penalty, see § 10.99

CHAPTER 112: ALCOHOLIC BEVERAGES AND ESTABLISHMENTS

Section

GENERAL PROVISIONS

§ 112.001 LIABILITY INSURANCE FOR SELLERS OF INTOXICATING LIQUOR, 3.2 PERCENT MALT LIQUOR AND WINE.

(A) Every person licensed to sell at retail intoxicating liquor, 3.2 percent malt liquor or wine at on-sale in the city must, after March 1, 1983, demonstrate proof of financial responsibility with regard to liability imposed by M.S. § 340A.409, to the City Clerk or the City Clerk's designee and to the Commissioner of Public Safety as a condition of the issuance or renewal of the person's license.

(B) Proof of financial responsibility may be given by filing:

(1) (a) A certificate that there is in effect an insurance policy or pool providing the following minimum coverages:

1. $50,000 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of $100,000 because of bodily injury to two or more persons in any one occurrence and in the amount of $10,000 because of injury to or destruction of property of others in any one occurrence. Hotels and motels having 200 rooms or more are required to have minimum coverage of $500,000 because of bodily injury for one or more persons.

2. $50,000 for loss of means of support of any one person, any one occurrence, and, subject to the limit for one person, $100,000 for loss of means of support of two or more persons in any one occurrence. Hotels and motels having 200 or more are required to have minimum coverage of $500,000 because of bodily injury for one or more persons.

3. The certificate must provide that no payment of any claim by the insurance company shall in any manner decrease the coverage provided for in respect to any other claim or claims brought against the insured or company thereafter.

(b) A bond of a surety company with minimum coverages as provided in subsection (a); or

(c) A certificate of the State Treasurer that the licensee has deposited with the State Treasurer $100,000 in cash or securities which may be purchased by savings banks or for trust funds having a market value of $100,000.

(2) The licensee must provide the certificate and proof to the City Clerk or designee at the time of application for a new license or renewal of the existing license. The certificate of insurance must show that all coverages meet or exceed the requirements of M.S. § 340A.409 and that the insurance company cannot cancel the insurance until at least ten days written notice of the cancellation has been served upon the city. If a new certificate of insurance is not filed with the City Clerk during the ten day period after notice of cancellation, the license to sell at retail intoxicating, 3.2 percent malt liquor or wine is to be suspended until a new certificate of insurance is filed with the City Clerk and the Minnesota Commissioner of Public Safety.

(3) The City Clerk is authorized to waive the foregoing insurance requirements for 3.2 percent malt liquor and wine licenses if the licensee files an affidavit from a certified public accountant to show that sales are less than the amounts set forth in M.S. § 340A.409, Subd. 4. The licensee must also file a written commitment with the City Clerk or designee that if sales exceed such amounts, the licensee will not continue to sell 3.2 percent malt liquor or wine until the licensee has filed a certificate of insurance meeting the requirements set forth in this section.

('72 Code, §825:00) (Ord. 1983-420(A), passed 5-9-83; Am. Ord. 1986-535(A), passed 7-28-86; Am. Ord. 1997-841, passed 3-24-97; Am. Ord. 2005-1052, passed 11-28-05)

§ 112.002 INSPECTION OF PREMISES.

The applicant must at all times permit the health officers and representatives of the Police and Fire Departments to inspect and examine the place of business described in the application, together with all appliances, instruments or equipment used or to be used in the conduct of the business for which the license is sought, and any refusal on the part of the applicant to permit such inspection or any

false statement in the application is sufficient ground for the refusal to issue such license or to revoke the same after issuance thereof.

('72 Code, § 810:50)

§ 112.003 MAINTENANCE OF ORDER AND CONDUCT ON LICENSED PREMISES.

(A) The City Council finds that the serving and consumption of alcoholic beverages in any establishment holding an on-sale intoxicating liquor license, an on-sale wine license, or an on-sale 3.2 percent malt liquor license can contribute to increased acts of disorderly conduct. These acts of disorderly conduct result in a greater demand on city services, negatively impact the livability of the city, and have an adverse impact on the health, safety and welfare of city residents. The City Council further finds that the holders of on-sale intoxicating liquor licenses and on-sale 3.2 percent malt liquor licenses need to be responsible for managing their establishments in a manner that does not contribute to acts of disorderly conduct by their customers, employees, or agents. For the purposes of this chapter, the term ***ESTABLISHMENT*** means the licensed premises and all portions of the property where the licensed premises is located, and the term ***LICENSEE*** means the holder of an on-sale intoxicating liquor license or the holder of an on-sale 3.2 percent malt liquor license.

(B) *Maintenance of order.* Each licensee must comply with the following provisions.

(1) A licensee is responsible for the conduct at its establishment and the conditions of sobriety and order of all persons at the establishment. The act of any employee or agent of the licensee is deemed to be the act of the licensee, and the licensee is liable for all penalties set forth in this chapter or state law equally with the employee. The licensee is deemed to have knowledge of any acts of disorderly conduct identified in this section occurring at the establishment.

(2) No licensee or any other person shall sell, give, barter, furnish or dispose of in any manner, directly or indirectly, any alcoholic beverage or 3.2 percent malt liquor, in any quantity, for any purpose whatsoever, to any obviously intoxicated person. An obviously intoxicated person shall not be allowed to enter a licensed premise. For purposes of this section, ***OBVIOUSLY INTOXICATED PERSON*** means a person who is presently impaired, mentally, physically, or emotionally, as a result of the presence of alcohol in the person's body and such impairment is obvious to a reasonable person. Evidence of an obviously intoxicated person includes, but is not limited to, the odor of intoxicants on the person's breath, bloodshot eyes, dilated pupils, stumbling, staggering, slurred speech, or other symptom commonly associated with intoxication.

(3) A licensee must require that all of its employees or agents who serve alcoholic beverages or who provide security at the establishment successfully complete an annual program of server and security training. Such program of server and security training must be approved by the Brooklyn Park Police Department. A licensee must annually submit proof to the Brooklyn Park Police Department that an approved program was successfully completed by each employee or agent who serves alcoholic beverages or who provides security at the establishment.

(4) Employees or agents of licensees must not consume alcoholic beverages while working, or work while obviously intoxicated.

(5) A licensee or any of its employees or agents shall not sell, offer to sell, or deliver to any person more than two alcoholic beverages for a single price or increase the volume of intoxicating liquor or 3.2 percent malt liquor in an alcoholic beverage without proportionately increasing the price charged for the alcoholic beverage. Special pricing on drinks, commonly referred to as "happy hour," may only be offered between the hours of 12:00 noon and 11:00 p.m. Temporary promotional pricing; i.e., pricing associated with a specific event, is allowed after 11:00 p.m. as long as the temporary promotional pricing is also offered during other hours of operation on the same day. Beer, wine, or liquor samplings are allowed as permitted by state law.

(6) A licensee or any of its employees or agents must engage in responsible serving practices. Sales of pitchers of alcoholic beverages are allowed, provided there are at least two persons intending to consume the pitcher of alcoholic beverages. The sale of a single serving of an alcoholic beverage which, when consumed, would, by itself, result in an alcohol concentration of .08 or more is not allowed.

(7) (a) A licensee or any of its employees or agents must not:

1. Encourage or permit customers to conduct games or contests that involve drinking;
2. Award prizes to customers based on alcohol consumption; or
3. Award prizes of alcohol to customers.

(b) Alcoholic beverages must not be included as part of a charge for admission to the licensed premises.

(8) A licensee or any of its employees or agents must require patrons and occupants of the establishment to conduct themselves in such a manner as to not cause any portion of the establishment to be disorderly, as defined in division (C) of this section or defined elsewhere in the city code or in state law.

(9) Employees or agents of a licensee or any person providing entertainment or working for or on behalf of a licensee, whether compensated or not, must act in accordance with federal, state and local laws, statutes, ordinances, regulations and rules, including any conditions associated with the liquor license. Conduct by any of those persons at the establishment will be considered to be, and treated as, the act or conduct of the licensee for the purpose of imposing penalties or other sanctions against a licensee.

(C) A licensee is responsible for acts of disorderly conduct by persons occupying its establishment when a licensee knows or has reason to know of acts of disorderly conduct by persons occupying its establishment or when a licensee manages its establishment in a manner that contributes to acts of disorderly conduct by persons occupying its establishment. For purposes of this section, the following types of conduct at an establishment are disorderly:

(1) Unlawful possession, delivery, or purchase of a controlled substance, as set forth in M.S. §§ 152.01 et seq. and Chapter 135 of this code;

(2) Disorderly conduct, as set forth in M.S. § 609.72 and § 134.15 et seq. of this code;

(3) Unlawful sale of intoxicating liquor or 3.2 percent malt liquor as set forth in M.S. Chapter 340A and §§ 112.030 through 112.069 of this code;

(4) Homicide and suicide, as set forth in M.S. §§ 609.18 through 609.215;

(5) Criminal sexual conduct, as set forth in M.S. §§ 609.342 through 609.3451;

(6) Prostitution or acts relating to prostitution including housing individuals engaged in prostitution as set forth in M.S. §§ 609.321, Subdivision 9, and 609.324;

(7) Unlawful use or possession of a firearm at an establishment as set forth in M.S. §§ 609.66 et seq. and Chapter 136 of this code;

(8) Assault as set forth in § 134.01 of this code;

(9) Contributing to the delinquency of a minor as defined in M.S. Chapter 260B;

(10) Sexual and labor trafficking crimes as set forth in M.S. §§ 609.281 through 609.284;

(11) Interference with a police officer as set forth in M.S. § 609.50;

(12) Terroristic threats as set forth in M.S. § 609.713;

(13) Unlawful assembly as set forth in M.S. § 609.715;

(14) Riots as set forth in M.S. § 609.71;

(15) Interfering with phone calls for emergency assistance as set forth in M.S. § 609.78;

(16) Gambling as set forth in M.S. §§ 609.75 through 609.76;

(17) Crime committed for the benefit of a gang as set forth in M.S. § 609.229;

(18) Racketeering as set forth in M.S. § 609.903; or

(19) Any other conduct deemed disorderly by the city or other law enforcement agency.

(D) Upon a determination by the City Manager that any act or conduct described in divisions (B) or (C) of this section, or any other act of disorderly conduct as provided for elsewhere in the city code or in state law, has occurred at an establishment, the City Manager will provide notice of the conduct to the owner of the establishment and to the licensee directing them to take action to prevent future incidents.

(E) If another act or conduct described in divisions (B) or (C) of this section, or any other act or conduct prohibited elsewhere in the city code or in state law, occurs within 12 months after an incident for which notice was provided under division (D) of this section, the owner and licensee will be notified and will be required to participate in a Problem Solving Conference (PSC). The PSC will be scheduled and conducted by the City Manager. The purpose of the PSC is to develop a plan of action to ensure that a future incident

does not occur at the establishment. The PSC must be approved by the City Manager. A licensee must participate in the PSC within five business days of the notice.

(F) If a third act or conduct described in divisions (B) or (C) of this section, or any other act or conduct prohibited elsewhere in the city code or in state law, occurs within 12 months after either of the two previous incidents, the City Manager will notify the owner and licensee of the third incident and will require the owner and licensee to submit a written report of the actions taken, and proposed to be taken, to prevent further incidents. The written report must be submitted to the City Manager no later than ten business days after notice of the third incident is mailed or delivered to the licensee. The written report must also detail all actions taken by the licensee in response to all previous incidents for which notices were sent to the licensee.

(G) After the third act or conduct described in divisions (B) or (C) of this section, or any other act or conduct prohibited elsewhere in the city code or in state law, the City Council may deny, revoke, suspend, or not renew the license, or may apply any other sanction provided by law. The owner and licensee shall be provided with written notice of a hearing before the City Council to consider such denial, revocation, suspension, non-renewal, or sanction. Such written notice must specify all incidents of disorderly conduct and violations under this section, and must state the date, time, place and purpose of the hearing. The hearing must be held no less than ten business days and no more than 30 days after giving such notice.

(H) Upon a decision to revoke, deny or not renew a license, the owner or licensee will not be eligible to apply for any new license for a period of one year. Any person who has had two or more licenses revoked, suspended, denied or not renewed will not be eligible to apply for any new licenses for a period of two years.

(I) A determination that an act or conduct described in divisions (B) or (C) of this section, or any other act or conduct prohibited elsewhere in the city code or in state law, has occurred at an establishment must be made based upon a fair preponderance of the evidence. It is not necessary that criminal charges be brought in order to support a determination by the City Council that any such act or conduct has occurred at the establishment. The fact of dismissal or acquittal of any such criminal charge does not operate as a bar to an adverse license action under this section.

(J) Enforcement actions provided in this section are not exclusive, and the City Council may take any action with respect to a licensee as is authorized by the city code or state or federal law. This may include a PSC as well as an immediate license suspension where there has been a determination by the City Council that continued operation poses a risk to public safety. If the City Council finds that a licensee failed to participate in a PSC, then this failure is grounds for a license suspension.

(K) The City Council may postpone or discontinue any enforcement action, including an action to deny, revoke, suspend, or not renew a license, if the owner and licensee have taken appropriate measures to prevent further violations or instances of disorderly conduct.

(L) All notices given by the city under this section must be personally served on the owner and licensee or sent by first class mail to the owner and licensee's last known addresses.

(M) Any person whose license is denied, revoked, suspended, or not renewed under this section shall have the right to appeal that decision by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to M.S. Chapter 606.

(Ord. 2009-1097, passed 4-6-09)

INTOXICATING LIQUORS

§ 112.030 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

CLUB.

(1) An incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which:

(a) Has more than 30 members;

(b) Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members;

(c) Is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose.

(2) No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

HOTEL. An establishment where food and lodging are regularly furnished to transients and which has a dining room serving the general public at tables and having facilities for seating at least 30 guests at one time; and at least 25 guest rooms.

INTOXICATING LIQUOR and ***LIQUOR.*** Ethyl alcohol, distilled, fermented, spirituous, vinous and malt liquors containing in excess of 3.2 percent of alcohol by weight.

MINOR. Any person who has not attained the age of 21.

OFF-SALE. The sale of liquor in original package in retail stores for consumption off or away from the premises where sold.

ON-SALE. The sale of liquor by the glass for consumption on the premises only.

PACKAGE or ***ORIGINAL PACKAGE.*** Any container or receptacle holding liquor, which container or receptacle is corked or sealed.

RESTAURANT. Any establishment, other than a hotel, under the control of a proprietor or manager, having appropriate facilities for the serving of meals to not less than 30 guests at one time and where meals are regularly furnished at tables to the general public and which employs an adequate staff to provide the usual and suitable service to its guests, and the principal part of the business of which is the serving of foods.

SALE, SELL and ***SOLD.*** All barters, and all manners or means, of furnishing intoxicating liquor and including such furnishing in violation or evasion of law.

SUNDAY SALE. The sale of liquor by the glass for consumption on the premises, in conjunction with the serving of food by the licensee, pursuant to a special license therefore issued by the city as authorized by state law.

THEATER. A building containing an auditorium in which live dramatic, musical, dance, or literary performances are regularly presented to holders of tickets for those performances.

('72 Code, § 805:00) (Ord. 1976-225(A), passed 8-9-76; Am. Ord. 1986-544(A), passed 9-22-86; Am. Ord. 1987-563(A), passed 6-8-87; Am. Ord. 1992-697, passed 5-26-92; Am. Ord. 2012-1140, passed 4-16-12)

§ 112.031 LICENSE REQUIRED.

(A) It is unlawful to, directly or indirectly, upon any premises or by any device, manufacture, import, sell, exchange, barter, dispose of or keep for sale any intoxicating liquor without first having obtained a license therefor as hereinafter provided. Licenses are of three kinds: "on-sale," "off-sale" and "Sunday sale," which are granted only for the purposes permitted by the statutes of the state and limited by this chapter.

(B) "On-sale" licenses permit the sale and consumption of liquor on the licensed premises only.

(C) (1) "Off-sale" licenses are granted to permit the sale of liquor at retail in the original package for consumption off the licensed premises only.

(2) Off-sale licensed stores may provide samples of malt liquor, wine liqueurs, and cordials which the licensee currently has in stock and is offering for sale to the general public without obtaining an additional license, provided the malt liquor, wine, liqueur, and cordial samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 100 milliliters of malt liquor per variety per customer, 50 milliliters of wine per variety per customer and 25 milliliters of liqueur or cordial per variety per customer.

(D) "Sunday sale" licenses permit the sale and consumption of liquor on the licensed premises only.

('72 Code, § 805:05) (Am. Ord. 1989-628(A), passed 6-26-89) Penalty, see § 10.99

§ 112.032 APPLICATION FOR LICENSES.

(A) Every person desiring a license for either "on" or "off" or for "Sunday" sales must file an application in the form to be prescribed by the State Department of Public Safety and with such additional information as the Council may require. The application for a "Sunday sale" license may be included with an application for an "on-sale" license.

(B) At the time of each original application for a license, the applicant must also pay a minimum investigating fee of $500 per person on the application and additional direct costs associated with the investigation will be billed to the applicant(s). The minimum investigating fee is not subject to refund. If the expenses of the investigation relating to any application exceed the minimum investigating fee, the city must notify the applicant of this fact and require the applicant to pay an additional investigating fee which the City Manager deems necessary to complete its investigation of the applicant. The applicant must pay such an additional investigating fee within five days of being so notified. If such additional investigating fee is not paid within such five-day period, the city shall discontinue consideration of the application.

(C) Each application must contain a provision on the application in bold print indicating that any withholding of information or the providing of false or misleading information will be grounds for denial or revocation of a liquor license. Any changes in the information provided on the application or provided during the investigation must be brought to the attention of the City Council by the applicant or licensee. If the changes take place during the investigation, the data must be provided to the Chief of Police or the City Manager in writing and they must report the changes to the City Council. Failure to report the changes by the applicant or the licensee may result in a denial or a revocation of a license.

(D) The Council, in its sole discretion and for any reasonable cause, may refuse to grant any license. Licenses will not be issued to a person who has any of the following:

(1) Is not a United States citizen;

(2) Has a felony conviction;

(3) Who has previous convictions of illegal sales of alcohol or alcoholic beverages, including but not limited to sales to minors;

(4) Has not properly filed personal and/or business tax returns;

(5) Has had a liquor license from any city, county, or state revoked within five years of the pending license application.

('72 Code, § 805:10) (Am. Ord. 1972-122(A), passed 8-28-72; Am. Ord. 1981-371(A), passed 12-14-81; Am. Ord. 1990-664(A), passed 11-26-90; Am. Ord. 2012-1140, passed 4-16-12)

§ 112.033 REGULATION.

(A) No off-sale liquor license may be issued except in a commercial or business use district.

(B) All licensees must prove to the Council that they are financially responsible and of good moral character. Financial data submitted as a part of the application must provide complete information to satisfy the City Council that the applicants have financial capital to commence business and to operate the business. The City Council is concerned that lack of capital could lead to sales practices which are contrary to the general welfare of the community.

(C) The number of "off-sale" licenses is limited to allow no more than one such license for every 4,000 residents. This provision does not apply to combination on and off-sale licenses. No more than 12 "off-sale" liquor licenses may be issued for property located south of 93rd Avenue.

(D) In a new area being opened to commercial development or if a new structure is being built in an existing commercial or business use district, or if an existing structure is being remodeled to house a new on-sale and/or off-sale license, the applicant/licensee must agree as a condition of acquiring the license that all construction must be completed within a specified time but in no event shall said time exceed a reasonable period as determined by the Council at the time of Council approval. A date for completion of construction shall be included at the time of issuance of a license. Failure to have completed construction and to have obtained a certificate of occupancy and to be in operation within the specified time results in automatic revocation of the license. The applicant/licensee must then be required to file an application for a new license, provide all data required for any new licensee and complete the entire licensing process. Upon the issuance of a license and the opening date established, the business must remain open and operational. If the business closes for more than 30 consecutive days the license shall be revoked unless it is closed by a circumstance out of the control of the business owner (fire, tornado, etc.).

('72 Code, § 805:20) (Am. Ord. 1981-371(A), passed 12-14-81; Am. Ord. 1986-517(A), passed 2-10-86; Am. Ord. 1989-639(A), passed 11-20-89; Am. Ord. 2004-1013, passed 5-10-04; Am. Ord. 2013-1160, passed 8-19-13)

§ 112.034 BOND REQUIRED.

A bond with a corporate surety must accompany each application for a license. If the application is for a "Sunday sale" special license, such bond requirement may be met by a separate bond or by the inclusion thereof in an existing "on-sale" bond when accompanied by a proper endorsement or certificate showing inclusion of "Sunday sales." In the case of an application for license for "on-sale" or "Sunday sale" or both, the application must be accompanied by a corporate surety bond in the sum of $4,000; or in lieu of such bond, cash or bonds of the United States of a market value of $4,000 may be deposited with the Treasurer on the same conditions as provided in the penalty clause of the required surety bond. In the case of an application for an "off-sale" license, a similar surety bond or cash or United States bond equivalent is required, but the amount of such bond is $2,000 and must be approved by the State Department of Public Safety.

('72 Code, § 805:25)

§ 112.035 BOND CONDITIONS.

All such bonds must be conditioned as follows:

(A) That the licensee will obey the law relating to such licensed premises.

(B) That the licensee will pay to the City of Brooklyn Park when due all license fees, penalties, and other charges provided by law.

(C) That in the event of any violation of the provisions of any law relating to the retail "off-sale" and retail "on-sale" and retail "Sunday sale" of intoxicating liquor, such bond must be forfeited to the city.

(D) That the licensee will pay to the extent of the principal amount of the bond any damages for death or injury caused by or resulting from the violation of any provision of law relating thereto, and in such cases recovery under this division may be had from the surety of this bond. The amount specified in the bond is declared to be a penalty, the amount recoverable to be measured by the actual damages; provided, however, that in no case is the surety to be liable for any amount in excess of the penal amount of the bond.

(E) All such bonds are for the benefit of the City of Brooklyn Park and all persons suffering damages by reason of the breach of the conditions of this subchapter or state statutes.

(F) If the applicant files cash or United States government bonds, as permitted in this section, the Finance Director must execute a receipt therefor and a copy of the receipt must be filed with the Clerk or designee. If government bonds are filed, the licensee is permitted to clip and take all interest bearing coupons thereto attached as they become due.

('72 Code, § 805:30) (Am. Ord. 2004-1013, passed 5-10-04)

§ 112.036 LICENSE FEES.

(A) All license fees as established by the Council from time to time must be paid at the time of filing the application.

(B) In the case of licenses granted for premises where construction is not yet completed, the Council may grant the license but the Clerk or designee must not issue the license until the construction is completed in accordance with the plans and specifications approved by the Council. The fee for the license is one-half of the license fee from the date of approval until liquor sales actually commence on the licensed premises. When sales commence, the full fee is to become effective prorated on a quarterly basis. In no event may a reduced fee apply for a licensed establishment under construction for a period of longer than 12 months from the date of Council approval, the full fee is to be paid for the balance of the construction period.

(C) The City Council may, in its discretion, prorate any or all license fees as it considers appropriate under the circumstances including, but not limited to, when a license is issued for an unexpired portion of a license year.

('72 Code, § 805:40) (Am. Ord. 1972-122(A), passed 8-28-72; Am. Ord. 2002-971, passed 5-13-02)

Cross-reference:

License fees, see Appendix

§ 112.037 GRANTING OF LICENSE.

The Council must cause an investigation to be made of all the representations set forth in the application. An opportunity must be given at a regular or special meeting of the Council to any person to be heard for or against the granting of any license. After the investigation and approval of the required bond, the Council must grant or refuse such license at its discretion; provided that no "off-sale" license becomes effective until it, together with the bond, has the approval of the State Department of Public Safety. All licensed premises must have the license posted in a conspicuous place therein at all times. No license may be transferable either as to licensee or premises without the approval of the Council and also the State Department of Public Safety in the case of "off-sale" licenses.

('72 Code, § 805:45)

§ 112.038 NEW LICENSE HEARING.

No license for the sale of intoxicating liquor "on-sale," "off-sale" or "Sunday sale" may be hereafter granted by the Council unless the license is a renewal of a license previously granted at the same location to the same licensee, until a public hearing is conducted by the Council after published notice in the official newspaper at least ten days in advance of the hearing.

('72 Code, § 805:50)

§ 112.039 APPLICATION REFERRED TO POLICE CHIEF.

(A) All applications for a license must be referred to the Chief of Police and to such other departments as the Council deems necessary for verification and investigation of the facts set forth in the application. The Chief of Police must cause to be made such investigation of the information required in this subchapter as is necessary and must make a written recommendation and report to the Council and the report must include a list of all violations of federal or state law or municipal ordinance. The Chief of Police is directed to trace the assets of the applicant individual, partnership or major stockholders of a corporation. This requirement is waived for corporations traded on the New York, American Stock Exchange, National Association of Securities Dealers National Market System or is a publicly held or traded corporation where no one individual has more than 25% of the stock ownership. In this investigation the Chief or the Chief's designated agent must require the applicant to provide substantiating documentation regarding the funds available for operation of the on-sale or off-sale licensee's liquor operation. The Council may order and conduct such additional investigation as it deems necessary.

(B) The requirement that the Chief of Police trace the applicant's assets has been waived for certain corporations as set forth above. In lieu of an investigation of the principals in the business, these publicly held corporations must designate with their application a manager or operator who shall be legally responsible for compliance with all federal, state, and local laws relating to the sale of intoxicating or 3.2 percent malt liquors. The named manager or operator who shall be responsible must agree in writing to accept service of any legal process relating to the operation of the licensed premises. The person responsible must have on file with the city at all times their current address where service of process will be accepted. At the time of the original application or at any time thereafter when the responsible manager or operator is changed, the Chief of Police must conduct a criminal investigation (not a financial investigation) to determine that the responsible manager or operator meets the city's standards applicable to obtaining a license and subject to all the fees and requirements set forth in §§ 112.032 and 112.035 of this code. The City Council must at its sole discretion approve or decline to approve the manager or operator to operate a public corporation's premises licensed to sell intoxicating malt liquor.

('72 Code, § 805:55) (Am. Ord. 1981-371(A), passed 12-14-81; Am. Ord. 1993-728, passed 7-12-93; Am. Ord. 1997-841, passed 3-24-97; Am. Ord. 2001-960, passed 11-26-01)

§ 112.040 NOTICE; GRANTING.

Upon receipt of the written report and recommendation by the Chief of Police, the information and data must be reviewed by the City Manager to determine that it is complete. The City Council must then be provided in writing a complete report regarding the application and the investigation. The City Council may request that the applicant(s) appear at a City Council Meeting to discuss

informally the applications and all relevant data. Within 20 days thereafter, the Council must instruct the Clerk to cause to be published in the official newspaper ten days in advance a notice of a hearing to be held, setting forth the day, time and place when the hearing will be held, the name of the applicant, the premises where the business is to be conducted, the nature of the business, and such other information as the Council may direct. At the hearing, opportunities must be given to any person to be heard for or against the granting of the license. After it has conducted the public hearing, the Council must grant or refuse the application at its discretion.

('72 Code, § 805:60) (Am. Ord. 1981-371(A), passed 12-14-81)

§ 112.041 CONDITIONS OF LICENSE.

All licenses granted hereunder are granted subject to the following conditions, all other conditions of this chapter, and subject to all other ordinances of the city applicable thereto and to all regulations promulgated by the State Department of Public Safety and all statutes of the State of Minnesota applicable thereto:

(A) Every licensee must be responsible for the conduct of the licensee's place of business and the conditions of sobriety and order therein. No "on-sale" dealer nor "Sunday sale" dealer shall sell liquor by the bottle or container for removal from the premises. No dealer license for "off-sale" shall permit the consumption of any liquor on such licensed premises except that off sale licensed stores may provide samples of malt liquor, wine, liqueurs, and cordials which the licensee currently has in stock and is offering for sale to the general public without obtaining an additional license, provided the malt liquor, wine, liqueur, and cordial samples are dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 100 milliliters of malt liquor per variety per customer, 50 milliliters of wine per variety per customer and 25 milliliters of liqueur or cordial per variety per customer.

(B) It is unlawful to sell intoxicating liquor to any minor. A license must not be granted to a minor and a person under 18 years of age must not be employed in any room constituting the place in which intoxicating liquors are sold at retail "on-sale" or "Sunday sale," except that persons under 18 years of age may be employed as musicians or to perform the duties of busboy or dishwashing services in places defined as a restaurant, hotel or motel. Persons under 18 years of age may be employed as waiters or waitresses at a restaurant, hotel or motel where only wine is sold, provided that the person under the age of 18 may not serve or sell any wine. The licensee must not permit any person under 18 years of age to loiter or remain in the room where intoxicating liquor is being sold or served unless accompanied by the minor's parent or legal guardian. A person 18, 19 or 20 years old may enter an establishment licensed under this chapter to:

(1) Perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by M.S. § 340A.412, Subdivision 10;

(2) Consume meals; and

(3) Attend social functions that are held in a portion of the establishment where liquor is not sold.

(C) An "on-sale" or "Sunday sale" licensee must not keep, possess or operate, or permit the keeping, possession or operation of, on the premises or in any room adjoining the licensed premises controlled by the licensee, any slot machine, dice, or other gambling device or apparatus, nor permit any gambling therein, except as authorized by the city pursuant to M.S. Chapter 349, or as amended, nor permit the licensed premises or any room in the same or in any adjoining building directly or indirectly under the licensee's control, to be used as a resort for prostitutes or other disorderly persons.

(D) A license must not be issued to any person not a citizen of the United States, nor to any person not of good moral character and repute, nor to any person who has been convicted of any willful violation of any law of the United States or the State of Minnesota, or of any of the local ordinances with regard to the manufacture, sale, distribution or possession for sale or distribution of intoxicating liquor, nor to any person whose license under this chapter is revoked for any willful violation of such laws or ordinances.

(E) Except as otherwise permitted in state law, a license must not be granted to any manufacturer or distiller of intoxicating liquor, nor to anyone interested in the ownership or operation of any such place, nor to a person operating a licensed place owned by a manufacturer, distiller, or exclusive wholesale distributing agent unless such interest was acquired at least six months prior to January 1, 1934; and equipment or fixtures in any licensed place must not be owned in whole or in part by any manufacturer or distiller.

(F) (1) No more than one off-sale license may be directly or indirectly issued or granted to one person or to one management within the city. It is unlawful for a person, partnership or corporation to knowingly have or possess a direct or indirect interest in more than one "off-sale" license in the city. "On-sale" licenses may be issued for the sale of intoxicating liquor in hotels, clubs, restaurants and establishments for "on-sale" of liquor exclusively. "Sunday sale" licenses may be issued to hotels or restaurants as defined in M.S. § 340A.101 and which have facilities for serving not less than 30 guests at one time and to which "on-sale" licenses have been issued or may be issued hereafter for the sale of intoxicating liquor. "Off-sale" licenses are issued only to proprietors or exclusive liquor

stores. No "off-sale" licenses may be issued to any applicant unless the applicant shows that the proposed location of the exclusive liquor store has a minimum of 1,000 square feet of floor space in a building which meets all building codes and building ordinances. Off-sale liquor stores in operation as of the date of this chapter change may continue to operate in their existing facilities as a non-conforming use until such time as they are transferred to a different location and subject to the same standards as set forth in this code. The existing facilities which do not meet the standards of this chapter must be treated as a non-conforming use and are subject to the provisions of this code.

(2) The term ***INTEREST*** includes any pecuniary interest in the ownership, operation, management, or profits of a retail liquor establishment, but does not include: bona fide loans; bona fide rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment, an interest in a corporation owning or operating a hotel but having at least 150 or more rental units holding a liquor license in conjunction therewith; or ten percent or less interest in any other corporation holding a license. A person who receives monies from time to time directly or indirectly from a licensee, in the absence of a bona fide consideration therefor and excluding bona fide gifts or donations, is deemed to have a pecuniary interest in such retail license. In determining "bona fides" the reasonable value of the goods or things received as consideration for any payment by the licensee and all other facts reasonably tending to prove or disprove the existence of any purposeful scheme or arrangement to evade the prohibitions of this chapter must be considered.

(G) All premises where any license hereunder is granted must be open to inspection by any police or health officer or other properly designated officer or employee of the city at any time during which the place so licensed is open to the public for business.

(H) A license must not be granted within 300 feet of any school, early childhood development center, licensed nursery or daycare facility, or religious institution. A license may be granted within 300 feet of any of the above listed uses if the licensed premises and the listed uses are located within the same zoning district. A license must not be granted within 1,500 feet of any state community college. The measurement must be made from building to building and not from the property lines.

(I) (1) Every room, place or premises wherein such liquor is permitted to be or is sold, including any café, restaurant, or dining room operated in connection therewith, or as part thereof, pursuant to an "on-sale" license, must be closed and kept closed to the public on every day between the hours of 2:00 a.m. and 8:00 a.m. During those hours, it is unlawful for a person or persons to be or remain upon or within, such room, place on premises for any purpose whatsoever, except that the owner or licensee, or the owner or licensee's agents or servants or employees may be and remain therein and thereon for the purpose only of cleaning, preparation of meals, necessary repairs, or other work in connection therewith, or as watchperson. An exception to the foregoing statement applies to hotels, restaurants, and clubs where portable bars are temporarily set up in dining rooms, club rooms, or other areas which are open to the public and which are used only on a temporary basis. Portable or temporary bars located on the licensed premises must have all liquor removed and/or places under lock and key within the above designated hours or all intoxicating liquor must be returned to a central location where the liquor is stored and which is closed to the public during the hours stated above.

(2) Nothing herein prohibits a hotel dining room, a restaurant, a bowling center, or a club from serving or selling food during hours that the sale of liquor is prohibited if the liquor is removed from display and placed in a locked enclosure or room that is inaccessible to the public during the hours stated above.

(J) (1) It is unlawful for intoxicating liquor to be drunk or consumed from the licensed premises during the times when the sale of intoxicating liquors is prohibited by state law or as such state law is modified by ordinance. During those hours and at those times no intoxicating liquor in any quantity whatsoever shall be served, kept, displayed or permitted to be on or in any table, booth, bar or other place in such licensed premises, except the stock of liquors stored therein during such times on the premises in such portions thereof as are accessible only to the licensee and his or her employees. Temporary or portable bars located as outlined in division (J) of this section hereof must have all liquor removed from sight and placed under lock and key or returned to a central storage area during the hours when the sale of liquor is prohibited.

(2) Nothing herein prohibits a hotel dining room, a restaurant, or a club from serving or selling food during hours that the sale of liquor is prohibited if the liquor is removed from display, covered or stored and is not visible to the public.

(K) As a condition to the granting of an "on-sale" or "Sunday sale" license where sale of food and such other articles is permitted by the Council, the Council may by resolution restrict, the sale and consumption of liquor at any place so licensed to tables where food is served to patrons purchasing and consuming said liquor, and may prohibit or limit the sale or consumption of liquor at a bar, and may prohibit the maintenance of a bar on the premises where liquor is displayed or dispensed.

(L) An "on-sale," "Sunday sale," or "off-sale" license is not effective beyond the compact and contiguous space named in the license granted, except that the Council may permit sales of liquor with meals in additional dining rooms open to the public and specified in the license where meals are regularly served to guests therein.

(M) It must be a condition of every license heretofore or hereafter issued hereunder to a corporation that the Clerk or designee be

furnished by the licensee with a correct list of all stockholders of the corporation to whom the license is issued and the number of shares held by each, either individually or beneficially for others; and it is the continuing duty of each corporate licensee to promptly notify the Clerk or designee of any change in ownership or beneficial interest of such shares. Any change of ownership or beneficial interest of shares of stock entitled to be voted at any meeting of the stockholders of such corporation which results in change in voting control of the corporation by the persons owning shares of stock therein is deemed equivalent to a transfer of the license issued to such corporation, and any such licenses must be revoked and terminated 30 days after any such change in ownership or beneficial interest of shares, unless the Council is notified of such change in writing and has approved thereof. The Council or any officer of the city designated by it may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify the names of stockholders and persons voting at meetings of such corporation, and the Council may cancel and terminate any license issued hereunder to a corporation upon determination by the Council that any change of ownership of stock in such corporate licensee has actually resulted in change of control of such corporation so as to materially affect the integrity and character of its management and its operation of an "on sale," "Sunday sale," or "off-sale" liquor business, provided that no such action must be taken until after a hearing by the Council on ten days notice to the licensee.

(N) The City Council finds that the sale and/or presence of alcoholic beverages by the drink and adult entertainment occurring on the same premises can increase disorderly conduct and can result in incidents of prostitution, public masturbation, indecent exposure, and/or sexual assault. In order to protect the health, safety, and welfare of city residents, and pursuant to the City Council's authority to regulate alcoholic beverages under M.S. Chapter 340A and the Twenty-First Amendment to the United States Constitution, it is unlawful for an on-sale licensee under this code to permit the following kinds of conduct on the licensed premises or in areas adjoining the licensed premises where the following kinds of conduct can be seen by patrons of the licensed premises:

(1) The performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation or flagellation; or

(2) The actual or simulated touching, caressing, or fondling on the breast, buttocks, anus, or genitals; or

(3) The actual or simulated displaying of the pubic hair, anus, vulva, or genitals; or

(4) The displaying of films, videos, still pictures, electronic reproduction, or any other visual reproduction of image depicting the acts described in (1) through (3) above; or

(5) The presentation of any female in such manner or attire as to expose to view any portion of the breast below the top of the areola, or any simulation thereof.

(6) It is unlawful for the licensee or their agent to allow or permit to remain in or about the licensed premises any person who performs acts as set forth in (1) through (5) above.

(7) The violation of any of the provisions of this chapter by the licensee or their employees agents constitutes grounds for the suspension or revocation of any and all intoxicating liquor, 3.2 percent malt liquor, or wine licenses issued to the premises or to the licensee.

('72 Code, § 805:65) (Am. Ord. 1992-700, passed 8-24-92; Am. Ord. 1993-715, passed 2-22-93; Am. Ord. 1997-841, passed 3-24-97; Am. Ord. 2004-1013, passed 5-10-04; Am. Ord. 2005-1045, passed 7-18-05; Am. Ord. 2015-1196, passed 9-14-15)

§ 112.042 HOURS OF OPERATION.

A room, place or premise where intoxicating liquor is permitted to be sold under an "on-sale," "off-sale," "Sunday sale" or "club license" and including a café, restaurant or dining room operated in connection therewith, must be closed to the public during the times when the sale of liquor is prohibited by state law. During those hours, it is unlawful for a person or persons to be allowed to be or remain within such room, place or premise, for any purpose whatsoever, except that the owner or licensee, the owner or licensee's agents, servants, or employees, may be and remain therefor the purpose only of cleaning, preparation of meals, necessary repairs, or other work in connection therewith.

('72 Code, § 805:70) (Am. Ord. 1989-628(A), passed 6-26-89; Am. Ord. 1989-641(A), passed 12-18-89; Am. Ord. 1990-655(A), passed 7-9-90) Penalty, see § 10.99

§ 112.043 RESTRICTIONS ON CONSUMPTION.

In any place licensed for "on-sale," the liquor sold must be served and consumed at tables, counters or bars equipped with chairs at

which customers must sit to be served. It is unlawful for liquor to be sold or consumed on a public highway or in an automobile.

('72 Code, § 805:75) Penalty, see § 10.99

§ 112.044 REVOCATION.

Any violation of any provision or condition of this chapter or the state licensing law or any falsification of any statement in the application is grounds for an adverse action by the City Council, including, but not limited to, suspension, revocation, denial, or non-renewal of the license. No portion of the license fee paid shall be returned upon suspension, revocation, denial or non-renewal.

('72 Code, § 805:80) (Am. Ord. 2009-1097, passed 4-6-09)

§ 112.045 SERVING SET-UPS IN UNLICENSED PLACES.

It is unlawful for any proprietor of any public place of business, other than a holder of an intoxicating liquor license to permit the consumption or displaying of intoxicating liquor upon such premises, or in any manner to serve or permit the serving of liquids for the purpose of mixing with intoxicating liquor, and the serving of any such liquids for the purpose of mixing with intoxicating liquor is prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to the provisions of this subchapter.

('72 Code, § 805:85) (Am. Ord. 2012-1140, passed 4-16-12) Penalty, see § 10.99

§ 112.046 PROHIBITED SALES.

It is unlawful to sell, furnish or deliver intoxicating liquor for any purpose to any minor or to any person obviously intoxicated or to any other person to whom sale is prohibited by state statute.

('72 Code, § 805:90) Penalty, see § 10.99

§ 112.047 DRINKING PROHIBITED.

The drinking of intoxicating liquor and/or 3.2 percent malt liquor on the public streets, public parking lots, public property, or in other public areas within the city is prohibited except in designated picnic areas approved by the City Council. The drinking of intoxicating liquor and/or 3.2 percent malt liquor in automobiles, on the public streets, public parking lots, or other public property within the city is prohibited.

('72 Code, § 805:95) (Ord. 1979-295(A), passed 7-9-79; Am. Ord. 1997-841, passed 3-24-97) Penalty, see § 10.99

§ 112.048 SALE OF INTOXICATING LIQUOR - RESTAURANTS.

At the time of the initial license application and each license renewal application for a restaurant, the applicant must provide written documentation demonstrating that at least 25% of the restaurant's gross receipts are attributable to the sale of food. This section does not apply to any restaurant for which an on-sale intoxicating liquor license was initially issued before July 1, 2012.

(Ord. 2012-1140, passed 4-16-12)

§ 112.049 LICENSES AVAILABLE.

The city may only issue an on-sale intoxicating liquor license to the following establishments:

(A) Hotels;

(B) Restaurants;

(C) Bowling centers;

(D) Clubs or congressionally chartered veterans organizations with the approval of the Commissioner, provided that the organization has been in existence for at least three years and liquor sales will only be to members and bona fide guests, except that a club may permit the general public to participate in a wine tasting conducted at the club under M.S. § 340A.419;

(E) Sports facilities located on land owned by the Metropolitan Sports Commission;

(F) Theaters; and

(G) Other locations authorized by special legislation of the state legislature.

(Ord. 2012-1140, passed 4-16-12)

3.2 PERCENT MALT LIQUOR

§ 112.055 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

3.2 PERCENT MALT LIQUOR. Any malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight and is a fermented malt beverage.

MINOR. Any person who has not attained the age of 21.

PERSON. Every person, persons, firm, association or corporation.

('72 Code, § 810:00) (Ord. 1976-225(A), passed 8-9-76; Am. Ord. 1986-544(A), passed 9-22-86; Am. Ord. 1989-628(A), passed 6-26- 89; Am. Ord. 1997-841, passed 3-24-97)

§ 112.056 LICENSE REQUIRED.

(A) It is unlawful to sell 3.2 percent malt liquors at wholesale or retail except when licensed as hereinafter provided. There are two types of licenses issued for the sale of 3.2 percent malt liquors, as hereinafter set out.

(B) "On-sale" licenses permit the licensee to sell 3.2 percent malt liquors for consumption on the premises. "On-sale" licenses may be granted only to restaurants, hotels, drug stores and bona fide clubs.

(C) "Off-sale" licenses permit the licensee to sell 3.2 percent malt liquors in the original package for consumption off the premises only, except that off-sale licensed stores may provide samples of malt liquor which the licensee has in stock and is offering for sale to the general public without obtaining an additional license, provided the malt liquor is dispensed at no charge and consumed on the licensed premises during the permitted hours of off-sale in a quantity less than 100 milliliters of malt liquor per variety per customer.

('72 Code, § 810:05) (Am. Ord. 1989-628(A), passed 6-26-89; Am. Ord. 1997-841, passed 3-24-97) Penalty, see § 10.99

§ 112.057 SALES BY MANUFACTURER.

A manufacturer of 3.2 percent malt liquors may without license sell the same to licensed retail dealers and may sell and deliver the same in quantities of not less than two gallons to consumers at their homes.

('72 Code, § 810:10) (Am. Ord. 1997-841, passed 3-24-97)

§ 112.058 OFF-SALE LICENSES.

Every distributor of 3.2 percent malt liquors selling the same within the city limits is required to take out an "off-sale" license unless the distributor is also a manufacturer thereof.

('72 Code, § 810:15) (Am. Ord. 1997-841, passed 3-24-97) Penalty, see § 10.99

§ 112.059 LIMITED LICENSES FOR BONA FIDE CLUBS.

Notwithstanding other licensing requirements for 3.2 percent malt liquor, the Council upon proper application may in their discretion grant limited licenses to sell 3.2 percent malt liquor "on-sale" to bona fide clubs which meet the definitions contained in M.S. § 340A.101. Such limited licenses must not exceed a two week period and require a payment in an amount as established by the fee resolution, set forth in the Appendix to this code, to the general fund of the city. The premises from which the 3.2 percent malt liquor is dispensed must be accurately described in the application. Only four such limited licenses may be granted to any bona fide club within any one calendar year except that a license for the entire year may be issued to such club under the provisions of § 112.062 of this subchapter.

('72 Code, § 810:20) (Am. Ord. 1974-169(A), passed 6-24-74; Am. Ord. 1997-841, passed 3-24-97)

§ 112.060 MUNICIPAL OPERATIONS EXEMPT.

The Council may at their discretion waive the license fee as it applies to any "on-sale" license issued to any city owned and operated facility.

('72 Code, § 810:25)

§ 112.061 APPLICATION.

Any person desiring either of the licenses herein described must first make application therefor to the Council by filing with the Council a formal application in writing, which application must set forth the applicant's name, residence and the location at which the applicant proposes selling such 3.2 percent malt liquors, together with such other information as the Council may require.

('72 Code, § 810:30) (Am. Ord. 1997-841, passed 3-24-97)

§ 112.062 FEES.

At the time of filing such application the licensee must deposit the required license fee in the amount set by the Council from time to time. No license will be issued until the fee has been paid. The license fees required to be paid are in addition to all other license fees required under any and all other ordinances. The City Council may, in its discretion, prorate any or all license fees as it considers appropriate under the circumstances including, but not limited to, when a license is issued for an unexpired portion of a license year.

('72 Code, § 810:35)(Am. Ord. 2002-971, passed 5-13-02)

Cross-reference:

License fees, see Appendix

§ 112.063 GRANTING OF LICENSE.

The City Council must cause an investigation to be made of all facts set forth in the application. Opportunity must be given to any person to be heard for or against the granting of any license. After the investigation, the City Council must grant or refuse any such application at its discretion.

('72 Code, § 810:40)

§ 112.064 CONDITIONS OF LICENSES.

All licenses granted hereunder are granted subject to the following conditions, and all other conditions of this chapter, and subject to

all other ordinances of the city applicable thereto:

(A) A license must not be granted to a minor.

(B) A license must not be granted to an applicant who already owns a license of the kind applied for.

(C) A license must not be issued to an applicant unless the applicant is the actual owner or proprietor of the business at the location where the applicant intends to sell such malt liquor.

(D) A person must not have in the person's possession for sale any 3.2 percent malt liquor without first having obtained one or both of the licenses herein provided for.

(E) A room, place or premises wherein such 3.2 percent malt liquor is permitted to be or is sold, including any café, restaurant, or dining room operated in connection therewith, or as part thereof, pursuant to an "on-sale" license, must be closed and kept closed to the public during the times when a sale of 3.2 percent malt liquor is prohibited by state law. During those hours, it is unlawful for a person or persons to be or remain upon, or within, such room, place or premises for any purpose whatsoever, except that the owner or licensee, the owner or licensee's agents or servants or employees may be and remain therein and thereon for the purpose only of cleaning, preparation of meals, necessary repairs, or other work in connection therewith, or as watchperson.

(F) It is unlawful for 3.2 percent malt liquor to be drunk or consumed from the licensed premises during the closing hours set forth in division (E) above, and at those times it is unlawful for 3.2 percent malt liquor in any quantity whatsoever to be served, kept, displayed or permitted to be on or in any table, booth, bar or other place in such licensed premises, except the stock of liquors stored therein during such times on the premises in such portions thereof as are accessible only to the licensee and the licensee's employees.

(G) The written license must at all times be posted in a conspicuous place on the premises named herein.

(H) All licenses granted under this ordinance must be issued to the applicant only, and must be issued for the premises described in the application.

(I) It is unlawful for a manufacturer of 3.2 percent malt liquors to have any ownership, in whole or in part, in the business of any licensee holding an "on-sale" license.

(J) Licenses hereunder may be issued only to persons who are citizens of the United States and who are of good moral character and repute.

(K) It is unlawful to sell 3.2 percent malt liquor to any minor. No license may be granted to a minor and no person under 18 years of age may be employed in any room constituting the place in which 3.2 percent liquors are sold at retail "on-sale" or "Sunday sale," except that persons under 18 years of age may be employed as musicians or to perform the duties of busboy or dishwashing services in places defined as a restaurant, hotel or motel. Persons under 18 years of age may be employed as waiters or waitresses at a restaurant, hotel or motel where only wine is sold, provided that the person under the age of 18 may not serve or sell any wine. The licensee must not permit any person under 18 years of age to loiter or remain in the room where 3.2 percent malt liquor is being sold or served unless accompanied by the minor's parent or legal guardian. A person 18, 19, or 20 years old may enter an establishment licensed under this chapter to:

(1) Perform work for the establishment, including the serving of 3.2 percent malt liquor, unless otherwise prohibited by M.S. § 340A.412. Subdivision 10;

(2) Consume meals; and

(3) Attend social functions that are held in a portion of the establishment where 3.2 percent malt liquor is not sold.

('72 Code, § 810:45) (Am. Ord. 1986-544(A), passed 9-22-86; Am. Ord. 1989-641(A), passed 12-18-89; Am. Ord. 1997-841, passed 3- 24-97)

§ 112.065 HOURS OF SALE.

It is unlawful to sell 3.2 percent malt liquor to the public during the times when a sale of 3.2 percent malt liquor is prohibited by state law.

('72 Code, § 810:55) (Am. Ord. 1984-466(A), passed 9-24-84; Am. Ord. 1989-641(A), passed 12-18-89; Am. Ord. 1997-841, passed 3- 24-97) Penalty, see § 10.99

§ 112.066 TERM OF LICENSE.

Licenses herein provided for expire December 31 of each year, but if issued after the first of the year the license fee therefor may, at the option of the Council, be prorated on a quarterly basis.

('72 Code, § 810:60)

§ 112.067 NON-TRANSFERABLE.

A license issued hereunder is not transferable.

('72 Code, § 810:65)

§ 112.068 FOOD LICENSE.

A license holder under this subchapter, except a bona fide club, must also hold a hotel or restaurant license or must be engaged primarily in the business of selling food and must hold a food stuff license.

('72 Code, § 810:70) (Am. Ord. 1982-384(A), passed 3-22-82) Penalty, see § 10.99

§ 112.069 MIXING DRINKS.

It is unlawful for a licensee hereunder to permit the practice of adding any alcohol, whiskey, moonshine or other intoxicating liquor to said 3.2 percent malt liquors sold or consumed in the licensee's place of business, and if such intoxicating liquor is added to such 3.2 percent malt liquor in the premises, it is deemed to have been done with the knowledge, acquiescence and consent of the licensee.

('72 Code, § 810:75) (Am. Ord. 1997-841, passed 3-24-97) Penalty, see § 10.99

ON-SALE WINE LICENSE

§ 112.095 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ON-SALE WINE LICENSE. A license authorizing the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food.

RESTAURANT. An establishment, under the control of a single proprietor or manager, having appropriate facilities for serving meals and seating not fewer than 25 guests, and where, in consideration of payment therefore, meals are regularly served at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests.

('72 Code, § 820:00)

§ 112.096 APPLICATION.

Application for an on-sale wine license must be made in the manner specified and subject to the conditions set forth in §§ 112.030 et seq. where applicable. On-sale wine licenses may be granted only to restaurants as defined herein.

('72 Code, § 820:05)

§ 112.097 FEES.

At the time of filing such application the licensee must deposit the required license fee in the amount set by the Council from time to time. A license must not be issued until the fee has been paid. The license fees required to be paid are in addition to all other license fees required under any and all other ordinances. The City Council may, in its discretion, prorate any or all license fees as it considers appropriate under the circumstances including, but not limited to, when a license is issued for un unexpired portion of a license year.

('72 Code, § 820:10) (Am. Ord. 2002-971, passed 5-13-02)

Cross-reference:

License fees, see Appendix

§ 112.098 HOURS.

Sales under an on-sale wine license are subject to the restrictions specified in § 112.041.

('72 Code, § 820:15) (Am. Ord. 1989-641(A), passed - -) Penalty, see § 10.99

§ 112.099 BOND.

A bond as required by §§ 112.034 and 112.035 must be filed with the City Clerk or the City Clerk's designee. An on-sale wine license is not effective until the license and bond are approved by the State Department of Public Safety.

('72 Code, § 820:20)

§ 112.100 ZONING LOCATION.

Notwithstanding the prohibition against serving intoxicating liquor, on-sale wine licenses are considered as restaurants (Class I) as defined in the zoning code. All other restrictions in said section apply to restaurants holding on-sale wine licenses.

('72 Code, § 820:25)

§ 112.101 SALE OF INTOXICATING MALT LIQUOR.

A holder of an on-sale wine license pursuant to this chapter who is also licensed to sell 3.2 percent malt liquors on-sale pursuant to § 112.056, and whose gross receipts are at least 60% attributable to the sale of food, may sell intoxicating malt liquors on-sale.

(Ord. 2004-1023, passed 12-6-04)

BREWER TAPROOM LICENSES

§ 112.200 DEFINITION.

For the purposes of this subchapter, ***BREWER TAPROOM LICENSE*** shall mean a license authorizing the on-sale of malt liquor produced by a brewer for consumption on the premises of or adjacent to one brewer location owned by the brewer.

(Ord. 2012-1140, passed 4-16-12)

§ 112.201 ISSUANCE OF LICENSE.

A brewer taproom license may be issued to the holder of a brewer's license under M. S. § 340A.301, Subd. 6(c), (i) or (j).

(Ord. 2012-1140, passed 4-16-12)

§ 112.202 CONDITIONS OF LICENSE.

(A) The only alcoholic beverages sold or consumed on the premises of the taproom will be malt liquor produced by the brewer upon the brewery premises.

(B) No taproom shall be located across a public right-of-way such as a street or alley from the brewery location.

(C) All other provisions of this chapter, except §§ 112.034 and 112.035, shall be applicable to such licenses and licensees unless inconsistent with the provisions of this section.

(D) Nothing in this section shall preclude the holder of a brewer taproom license from also holding a license to operate a restaurant at the taproom location.

(Ord. 2012-1140, passed 4-16-12; Am. Ord. 2016-1203, passed 3-14-16)

BREWPUB LICENSES

§ 112.210 OFF-SALE PERMITTED.

Brewpub off-sale malt liquor license as provided in M.S. § 340A.301, Subd. 7, which may be issued to a brewer who holds a brewer license issued by the Minnesota Commissioner of Public Safety for the operation of a brewpub and shall be operated in and as a part of a restaurant establishment for which an on-sale intoxicating liquor license has been issued by the city.

(A) An off-sale license may be issued solely for the malt liquor produced and packaged on the licensed premises and only upon approval of the license by the Minnesota Commissioner of Public Safety.

(B) Off-sale malt liquor shall be limited to the legal hours for off-sale pursuant to M.S. § 340A.504, Subd. 4 and must be removed from the premises before the applicable off-sale closing time requirements.

(C) Only malt liquor may be brewed or manufactured at the licensed premises and not more than 3,500 barrels of malt liquor in a calendar year may be brewed or manufactured at the licensed premises.

(Ord. 2012-1140, passed 4-16-12)

§ 112.211 PACKAGING REQUIREMENTS.

The malt liquor sold off-sale shall be packaged in 64-ounce containers, commonly known as "growlers" and shall have the following requirements for packaging:

(A) The containers shall bear a twist type closure, cork, stopper, or plug.

(B) At the time of sale, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container and extend over the top of the twist type closure, cork, stopper, or plug forming a seal that must be broken upon opening of the container.

(C) The adhesive band, strip, or sleeve shall bear the name and address of the brewer/licensee selling the malt liquor.

(D) The containers shall be identified as malt liquor, contain the name of the malt liquor, bear the name and address of the brewer/licensee selling the malt liquor, and the contents in the container packaged as required herein shall be considered intoxicating liquor unless the alcoholic content is labeled as otherwise in accordance with the provisions of Minn. Rules 7515.1100.

(Ord. 2012-1140, passed 4-16-12)

TEMPORARY LICENSES

§ 112.300 TEMPORARY ON-SALE PERMITTED.

(A) (1) The City Council may authorize a temporary 3.2 percent malt liquor license or intoxicating liquor license to:

(a) A club or charitable, religious, or other nonprofit organization in existence for at least three years,

(b) A political committee registered under M.S. §10A.14, or

(c) A state university, a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the licensee.

(2) The license may authorize the on-sale of intoxicating liquor for not more than four consecutive days, and may authorize on-sales on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full-year on-sale intoxicating liquor license issued by the city. The licenses are subject to the terms, including a license fee, imposed by the city. Licenses issued under this subdivision are subject to all laws and ordinances governing the sale of intoxicating liquor except M.S. §§ 340A.409 and 340A.504, Subd. 3, paragraph (d), and those laws and ordinances which by their nature are not applicable. Licenses under this subdivision are not valid unless first approved by the Commissioner of Public Safety.

(B) The City Council may issue to a brewer who manufactures fewer than 3,500 barrels of malt liquor in a year a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer. The terms and conditions specified for temporary licenses under division (A) shall apply to a license issued under this division, except that the requirements of M.S. § 340A.409, Subd. 1 to 3a, shall apply to the license.

(C) The City Council may issue to a microdistillery a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the microdistillery. The terms and conditions specified for temporary licenses under division (A) shall apply to a license issued under this division, except that the requirements of M.S. § 340A.409, Subd. 1 to 3a, shall apply to the license.

(Ord. 2012-1140, passed 4-16-12; Am. Ord. 2015-1196, passed 9-14-15)

MICRODISTILLERIES

§ 112.400 DEFINITIONS.

For the purposes of this subchapter, ***COCKTAIL ROOM LICENSE*** shall mean a license authorizing a self-contained room for the on-sale of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller pursuant to M.S. § 340A.22.

For the purposes of this subchapter, ***OFF-SALE MICRODISTILLERY LICENSE*** shall mean a license authorizing the off-sale of distilled spirits manufactured on-site pursuant to M.S. § 340A.22.

(Ord. 2014-1183, passed 10-6-14; Am. Ord. 2015-1196, passed 9-14-15)

§ 112.401 ISSUANCE OF LICENSE.

(A) A cocktail room license may be issued to the holder of a microdistillery license under M.S. § 340A.22.

(B) An off-sale microdistillery license may be issued to the holder of a microdistillery license under M.S. § 340A.22.

(Ord. 2014-1183, passed 10-6-14; Am. Ord. 2015-1196, passed 9-14-15)

§ 112.402 FEES.

At the time of filing such application the licensee must deposit the required license fee in the amount set by the Council from time to time. A license must not be issued until the fee has been paid. The license fees required to be paid are in addition to all other fees required under any and all other ordinances. The City Council may, in its discretion, prorate any or all license fees as it considers appropriate under the circumstances including, but not limited to, when a license is issued for an unexpired portion of a license year.

(Ord. 2014-1183, passed 10-6-14; Am. Ord. 2015-1196, passed 9-14-15)

§ 112.403 CONDITIONS ON LICENSE.

(A) A cocktail room license is issued pursuant to the provisions of M.S. § 340A.22. All other provisions of §§ 112.001 to 112.049, except §§ 112.034 and 112.035, shall be applicable to a cocktail room license and a cocktail room licensee unless inconsistent with the provisions of this subchapter or with the provisions of state law.

(B) An off-sale microdistillery license is issued pursuant to the provisions of M.S. § 340A.22. All other provisions of §§ 112.001 to 112.049, except §§ 112.034 and 112.035, shall be applicable to an off-sale microdistillery license and an off-sale microdistillery licensee unless inconsistent with the provisions of this subchapter or with the provisions of state law.

(Ord. 2014-1183, passed 10-6-14; Am. Ord. 2015-1196, passed 9-14-15; Am. Ord. 2016-1203, passed 3-14-16)

ENFORCEMENT

§ 112.998 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises must be open to inspection by the Police Department or other authorized city official during regular business hours. From time to time, but at least as often as required by state law, the city will conduct compliance checks, following the procedures and requirements outlined in Minnesota State Statutes. Nothing in this section prohibits other compliance checks authorized by state or federal law for educational, research, or training purposes, or as required for the enforcement of any local ordinance, or state or federal law.

(Ord. 2012-1140, passed 4-16-12)

§ 112.999 VIOLATIONS AND PENALTY.

(A) *Violations.*

(1) *Notice.* Upon discovery of a suspected violation, the alleged violator must be issued, either personally or by mail, a citation that sets forth the alleged violation and which must inform the alleged violator of their right to be heard on the accusation.

(2) *Hearings.* If a person accused of violating this chapter so requests, a hearing will be scheduled, the time and place of which must be published and provided to the accused violator.

(3) *Hearing officer.* The City Council will periodically approve a list of persons, from which the City Manager or designated agent will randomly select a hearing officer to hear and determine a matter for which a hearing is requested.

(4) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under division (B) of this section, must be recorded in writing, a copy of which must be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings must be recorded and a copy provided to the acquitted accused violator.

(5) *Appeals.* Appeals of any decision made by the hearing officer must be filed in the district court for the city in which the alleged violation occurred.

(6) *Prosecution.* Nothing in this section prohibits the city or any other legitimate jurisdiction from seeking criminal prosecution for violations of this chapter or any other state or federal law regulating alcoholic beverages.

(7) *Continued violation.* Each violation, and every day in which a violation occurs or continues, constitutes a separate offense.

(B) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee have violated this chapter, will be charged as follows:

(a) First violation of this chapter, an administrative fine of $500.

(b) Second offense at the same licensed premises within a 24-month period, an administrative fine of $750.

(c) Third offense at the same licensed location within a 24-month period, an administrative fine of $1,000 and the license will be suspended for seven days.

(d) Fourth offense at the same licensed location within a 24-month period, an administrative fine of $1,250 and the license will be suspended for 30 days.

(e) Fifth offense at the same licensed location within a 24-month period, an administrative fine of $1,500 and the license will be revoked.

(f) It is an affirmative defense to the charge of selling alcoholic beverages to a person under the age of 21 years in violation of this chapter that the licensee or individual making the sale relied in good faith upon proof of age as follows:

1. A valid driver's license or identification card issued by the State of Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or

2. A valid military identification card issued by the United States Department of Defense; or

3. In the case of a foreign national, from a nation other than Canada, by a valid passport.

(2) *Other individuals*. Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter will be charged an administrative fee of $50.

(3) *Minors*. Charges for minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, alcohol or alcoholic beverages will be routed through the Hennepin County Juvenile diversion program.

(4) *Criminal prosecution*. Nothing in this section prohibits the city from seeking criminal prosecution for violations of this chapter or any other state or federal law regulating alcoholic beverages.

(Ord. 2012-1140, passed 4-16-12)

CHAPTER 113: AMUSEMENTS AND THEATRICAL ENTERTAINMENT

Section

MOTION PICTURE ESTABLISHMENTS

§ 113.40 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

LICENSEE. A person having a city license in full force and effect issued hereunder for a motion picture establishment.

MOTION PICTURE ESTABLISHMENT. Any premises in which motion pictures are projected upon the screen for viewing by patrons and for which an admission charge is made.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

('72 Code, § 426:00) (Ord. 1979-296(A), passed 7-23-79)

§ 113.41 LICENSE REQUIRED.

It is unlawful for a person to engage in the business of operating a motion picture establishment or to exhibit any motion pictures for which admission is charged either directly or indirectly without a license; provided that no license is necessary for any motion picture exhibition which is given for the benefit of any school, church or benevolent institution or for any charitable purpose or is exhibited in any home.

('72 Code, § 426:05) (Ord. 1979-296(A), passed 7-23-79) Penalty, see § 10.99

§ 113.42 APPLICATION.

Application for a license issued hereunder must be made upon forms prepared and made available by the Licensing Division and must state:

(A) The name and address of the applicant in the case of an individual. The name and address of all partners in the case of a partnership. The name and address of all officers in the case of a corporation.

(B) Three references as to financial responsibility and three references as to good character of the applicant or applicants.

(C) The hours of operation of the motion picture establishment.

(D) The application required hereunder must be accompanied by a plat or drawing of the motion picture establishment showing its location, size and capacity, location and size of entrances and exits, kind of ground surface, location, size and construction of all structures and location, size and construction of any walls, fences or barriers surrounding the premises.

(E) In cases where the applicant lives outside of Hennepin County, the application must be signed by a resident, subject to service of process, who must be locally responsible for compliance with this and other ordinances of the city and the licensee must always have a person authorized to accept service of process for the licensee and the person must live in Hennepin County.

('72 Code, § 426:10) (Ord. 1979-296(A), passed 7-23-79)

§ 113.43 FEES.

An application for a license hereunder must be accompanied by the annual license fee. The fee is as established in the Appendix to this code.

('72 Code, § 426:15) (Ord. 1979-296(A), passed 7-23-79)

§ 113.44 STANDARDS OF ISSUANCE.

The City Council must approve the issuance of a license hereunder when they find:

(A) That the applicant is capable of operating the proposed business in a manner consistent with the public health, safety and general welfare; and

(B) That the requirements of this subchapter and of all other governing laws and ordinances have been met.

('72 Code, § 426:20) (Ord. 1979-296(A), passed 7-23-79; Am. Ord. 2004-1013, passed 5-10-04)

§ 113.45 DUTIES OF LICENSEE.

A licensee hereunder must comply with the following requirements and standards of operation:

(A) Quiet and good order. The licensee must maintain quiet and good order upon the premises where any motion picture establishment is operated and loitering must not be permitted in or about the entrances or exits from such theater. All indoor motion picture establishments must have at least four exits to the ground for use in case of fire which must be accessible at all times and if above ground must have one fireproof stairway leading thereto. The doors of all indoor motion picture theaters must be so hung and arranged as to open and swing outward during any exhibition of a motion picture and must be kept unlocked and unfastened during the exhibition and in such condition that immediate egress from such building must not be hindered, prevented or delayed.

(B) All aisles in indoor motion picture theaters having seats on each side must not be less than three feet in width and increased in width two inches for every ten feet of the seats farthest from the exit.

(C) Every projection machine in a motion picture establishment must be housed in a fireproof booth constructed to conform with the laws of the State of Minnesota and the ordinances of the City of Brooklyn Park.

(D) In addition to the other inspections required by law the Fire Chief must inspect all motion picture establishments and if the Chief deems the same not to afford proper protection to the public in cases of fire or accident the Chief must cause the building to be closed to the public until it shall be so arranged as to afford proper protection in such cases.

(E) The licensee must not permit indecent, obscene immoral or suggestive advertising on the premises of any motion picture establishment and no picture or other form of advertising is permitted which is not true to the theatrical performance or a moving picture entertainment as advertised or which misleads or misinforms the public as to the nature of the picture or entertainment to be exhibited.

(F) The licensee must not admit children under the age of 16 to any outdoor motion picture establishment unless accompanied by and in direct personal charge of the child's parent or other responsible person.

(G) (1) Non-intoxicating or intoxicating liquor must not be drunk, consumed, served, kept or displayed on any premises licensed under this ordinance.

(2) A person must not have in the person's possession or on the person's person while in a private motor vehicle upon the premises of a theater licensed under this subchapter, any bottle or receptacle containing intoxicating or 3.2 percent malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

(3) It is unlawful for the owner of any private motor vehicle or the driver, if the owner is not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when the vehicle is upon the premises of a licensed theater, any bottle or receptacle containing intoxicating liquors or 3.2 percent malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when the vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

('72 Code, § 426:25) (Ord. 1979-296(A), passed 7-23-79) Penalty, see § 10.99

§ 113.46 FILMS.

It is unlawful for a licensee to knowingly allow or permit the showing of any motion picture containing the following when there are present within the licensee's establishment children under the age of 18 years or when the motion picture is visible from any public thoroughfare or private property other than the property on which the picture is being shown:

(A) ***NUDITY*** means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple (or the breast with the nipple and immediately adjacent area only covered).

(B) ***SEXUAL CONDUCT*** means any of the following depicted sexual conduct:

(1) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude, or clad in undergarments, a mask or bizarre costume, or the condition of being bound, fettered, or otherwise physically restrained on the part of one who is so clothed as an act of sexual stimulation or gratification;

(2) Human defecation or urination;

(3) The condition of human male or female genitals, or the breasts of the female when in a state of sexual stimulation, or the sensual experience of humans in engaging in or witnessing sexual conduct or nudity; or

(4) Human masturbation, sexual intercourse or sodomy, actual or simulated, or any touching of the genitals, pubic areas or buttocks of a human being, whether alone or between members of the same or opposite sex or between humans or animals in an act of apparent sexual stimulation or gratification.

(C) An obscene motion picture as defined in M.S. § 617.298, Subd. 2.

(D) Any other conduct which is so obscene as to be unfit to be seen by children under the age of 18 years old when viewed in light of contemporary community standards, and is utterly without redeeming social importance for minors.

('72 Code, § 426:30) (Ord. 1979-296(A), passed 7-23-79) Penalty, see § 10.99

§ 113.47 STANDARDS FOR MAINTENANCE OF PREMISES.

(A) *Access.* The licensee must provide access available to public streets or other public ways from at least two points at all times. Such means of access must be kept clear by the licensee at all times to facilitate the departure of persons and vehicles and to permit entrance of fire apparatus or ambulances in case of emergency. Drives must be channelized by the licensee and limited to not more than three lanes to control traffic.

(B) *Drives.* All drives and areas used by vehicles within 50 feet of the public right of way must be satisfactorily paved by the licensee or treated to avoid creating dust.

(C) *Lighting.* Exits and passageways leading to them must be kept adequately lighted by the licensee at all times when opened to the public. The licensee must provide artificial light whenever natural light is inadequate.

(D) *State and city fire laws.* All rules, regulations and conditions adopted, issued and prescribed by the State Fire Marshal under any and all laws of this state are hereby adopted by reference and incorporated in and made a part of this chapter as completely as if set out here in full. The licensee is subject to any and all rules, regulations and city code requirements adopted by this Council or issued and prescribed by the City Fire Chief. Three copies of the laws and of the rules, regulations and conditions are hereby filed with the City Clerk and made a part of this record and the City Clerk is hereby instructed to keep said copies available for inspection at all times to any interested party. Any violation of any provision of the laws or of the rules, regulations and conditions is a violation of this subchapter.

(E) *Sanitary facilities.* Adequate and proper sanitary facilities approved by the Health Department must be provided by the licensee.

(F) *Attendants.* At all times when a motion picture establishment is open to the public the licensee must provide an adequate number of qualified attendants on duty at all times who must see that order is maintained, that disorderly or immoral conduct is

prevented, that the entrances and exits are kept free from congestion and that this subchapter and all other governing ordinances, rules and regulations pertaining to motion picture establishments are observed.

(G) *Fence or wall.* The licensees of any outdoor motion picture establishment must provide a wall or fence of adequate height to screen the patrons and cars in attendance at the theater from the view of the surrounding property. Such fence must be of design and structure approved by the City Building Official. The perimeter of the fence must be landscaped with suitable plants and shrubbery to preserve as far as possible harmony with the appearance of the surrounding property.

(H) *Noise.* The licensee of any outdoor motion picture theater must provide individual loudspeakers for each car and a central loudspeaker system must not be permitted by the licensee.

(I) *Commercial activities.* Any sale of soft drinks, confections or other articles of merchandise is governed by the laws and ordinances governing such business and requires the same license as if such sale were conducted elsewhere.

('72 Code, § 426:35) (Ord. 1979-296(A), passed 7-23-79) Penalty, see § 10.99

§ 113.48 REVOCATION OR SUSPENSION.

(A) Every license or permit issued under this subchapter is subject to the right, which is hereby expressly reserved, to suspend or revoke the same should the license holder or their agents, employees, representatives or lessees directly or indirectly operate or maintain motion picture establishments contrary to the provisions of this subchapter or any other ordinance of the city or any special permit issued by the city or the laws of the State of Minnesota.

(B) The license may be suspended or revoked by the Council after a written notice is sent to the license holder specifying the ordinance or law violations with which they are charged. This notice must also specify the date for hearing before the Council, which must not be less than ten days from the date of the notice.

(C) At such hearing before the Council, the license holder or their attorneys may submit and present witnesses in their defense.

(D) After a hearing the Council may suspend or revoke the license if they deem it necessary to protect the public health, safety or general welfare.

('72 Code, § 426:40) (Ord. 1979-296(A), passed 7-23-79)

§ 113.49 SUMMARY ACTION.

(A) When the conduct of any license holder or their agent, representative, employee or lessee or the condition of their motion picture establishment is detrimental to the public health, safety and general welfare as to constitute a nuisance, fire hazard or other unsafe or dangerous condition and thus give rise to an emergency, the Building Official has the authority to summarily condemn or close off such area of the motion picture establishment.

(B) Any person aggrieved by a decision of the Building Official to cease business or revoke or suspend the license or permit is entitled to appeal to the Council, immediately by filing a notice of appeal with the Manager. The Manager must schedule a date for hearing before the Council and notify the aggrieved person of the date.

(C) The hearing must be conducted in the same manner as if the aggrieved person had not received summary action.

(D) The decision of the Building Official is not voided by the filing of such appeal. Only after the Council has held its hearing will the decision of the Building Official be affected.

('72 Code, § 426:45) (Ord. 1979-296(A), passed 7-23-79)

§ 113.50 APPLICABLE LAWS.

Licensees are subject to all of the ordinances of the city and the State of Minnesota relating to motion picture establishments; and this subchapter must not be construed or interpreted to supersede or limit any other such applicable ordinance or law.

('72 Code, § 426:50) (Ord. 1979-296(A), passed 7-23-79)

§ 113.60 PURPOSE.

The purpose of this subchapter is to incorporate M.S. §§ 349.11 through 349.23, inclusive into the city code, to regulate legal forms of gambling, to prevent the commercialization of gambling, to insure integrity of operations, and providing for the use of net profits only for lawful purposes. It also provides for local regulation and approval as authorized by M.S. § 349.213.

('72 Code, § 491:00) (Ord. 1988-597(A), passed - -)

§ 113.61 DEFINITIONS.

The terms used in this subchapter and defined in M.S. §§ 349.11 through 349.22, inclusive, and defined in the rules adopted pursuant to the authority contained in the said statutes have the meanings set forth in those statutes and rules.

('72 Code, § 491:05) (Ord. 1988-597(A), passed - -)

§ 113.62 LAWFUL GAMBLING.

Gambling is unlawful in the City of Brooklyn Park except bingo, raffle games, paddlewheels, tipboards and pull-tabs duly licensed or otherwise allowed pursuant to the provisions of this section; M.S. §§ 349.11 through 349.22, inclusive, and rules adopted pursuant to the authority contained in said statutes.

(A) No Brooklyn Park permit is required for the conduct of gambling exempt from licensing under state law.

(B) Nothing in this section is deemed to be an automatic approval of a license applied for with the Charitable Gambling Control Board. The city reserves the right to disapprove licenses for individual bingo occasions, raffle games, paddlwheels, tipboards and pull-tab distributions.

('72 Code, § 491:10) (Ord. 1988-597(A), passed - -; Am. Ord. 2002-963, passed 2-11-02) Penalty, see § 10.99

§ 113.63 ADDITIONAL REGULATIONS.

In addition to the requirements of M.S. §§ 349.11 through 349.22, inclusive, and rules adopted pursuant to the authority contained in those statutes, lawful gambling is subject to the regulations set forth in the following divisions:

(A) Except as provided in this division, it is unlawful to disseminate in the city, in any manner, information concerning any present or future lawful gambling event of opportunity.

(1) An organization conducting lawful gambling, duly licensed or otherwise allowed pursuant to the statutes and rules referred to in this section, may disseminate information to its own membership about such games.

(2) Signs advertising bingo, a raffle or a pull-tab distribution are regulated pursuant to the provisions of the applicable sections of this code.

(3) Advertising and news reporting contained in newspaper, radio and television media available to the general public of more than one municipality and addressed to the general public, and not addressed to the residents of Brooklyn Park, is exempt from the provisions of this section.

(B) Pull-tab operations.

(1) Pull-tab operations may not be conducted on any premises other than a church, a licensed bingo hall, the premises of a fraternal, veterans or other non-profit organization, or the premises of an on-sale liquor licensee of the City of Brooklyn Park.

(2) To be licensed to conduct pull-tab operations, any organization or local subdivision thereof, must meet all the following requirements:

(a) The organization or the local subdivision has been in continuous existence holding meetings and conforming with the requirements of this subdivision for more than one year prior to the approval of the license; and

(b) Pursuant to M.S. § 349.213, 75% of the net profits of any Brooklyn Park pull-tab distribution will be spent in the City of Brooklyn Park or on items or activities that will directly benefit citizens of Brooklyn Park. For purposes of this division, the term ***NET PROFITS*** means all monies received from pull-tab purchasers minus amounts spent for necessary and statutorily allowed expenses related to the pull-tab distribution.

(c) The term ***TRADE AREA*** means all that area described below: City of Brooklyn Park, and all contiguous cities and the City of Minneapolis.

(3) A pull-tab operation at a licensed bingo hall may only be conducted by the same organization that is simultaneously conducting the bingo event.

(4) Any one organization may hold three licenses within the city.

('72 Code, § 491:15) (Ord. 1988-597(A), passed - -; Am. Ord. 1990-644(A), passed 2-26-90; Am. Ord. 1994-699, passed - -; Am. Ord. 1994-765, passed 7-25-94; Am. Ord. 1999-895, passed 3-22-99; Am. Ord. 2000-927, passed 6-26-00) Penalty, see § 10.99

§ 113.64 ADOPTION BY REFERENCE.

M.S. §§ 349.11 through 349.22, inclusive, and rules adopted pursuant to the authority contained in said statutes are hereby adopted by reference and are incorporated in this subchapter as completely as if set out in full.

('72 Code, § 491:20) (Ord. 1988-597(A), passed - -)

CHAPTER 114: FOOD ESTABLISHMENTS

Section

§ 114.01 FINDINGS AND PURPOSE.

(A) *Purpose.* This chapter is enacted to establish standards for the regulation of food establishments to protect the health, safety and general welfare of the people of the city pursuant to powers granted under M.S. Chapters 28A and 145A, and subsequent recodifications and/or amendments as may be adopted from time to time.

(B) *Objectives.* The general objectives of this chapter are as follows:

(1) To prevent foodborne illness.

(2) To correct and prevent conditions that may adversely affect persons utilizing food establishments.

(3) To provide standards for the design, construction, operation, and maintenance of food establishments.

(4) To meet consumer expectations of the safety of food establishments.

(C) *Scope.* This chapter is applicable to all food establishments where food, meals, snacks, beverages, or ingredients thereof are stored, prepared, or sold for consumption on or off the premises. Food establishments include, but are not limited to restaurants, drive-ins, bars, taverns, cafeterias, delicatessens, snack bars, grocery stores, retail bakeries, convenience stores, meat markets, caterers, cafes, clubs, lodges, commissaries, lodging facilities, resorts, public and private schools, public buildings, group day care facilities, concession stands, satellite or catered feeding locations, catering food vehicles, food vehicles, vending machines, food or beverage carts, and similar business and establishments.

(Ord. 2001-958, passed 10-22-01)

§ 114.02 ADOPTION OF STATE AND COUNTY REGULATIONS.

The provisions in M.S. Chapter 157, except § 157.16, and in Minn. Rules 4626.0010 - 4626.2025 and all subsequent recodifications and amendments, and the Hennepin County Food Protection Ordinance No. 3 §§ 5 - 8 are adopted by reference and incorporated into the city code in full, except as otherwise modified in this chapter.

(Ord. 2001-958, passed 10-22-01; Am. Ord. 2012-1135, passed 3-26-12)

§ 114.03 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Brooklyn Park and its designated employees or person-in-charges.

HEALTH AUTHORITY. As used in this chapter or the Hennepin County Ordinance No. 3, the city's Code Enforcement and Public Health Division, its designated employees, or other designated agents.

ITINERANT FOOD ESTABLISHMENT. A food establishment operating as a seasonal permanent food stand, seasonal temporary food stand, or special event food stand as defined in M.S. § 157.15, Subd. 12.a, 13, and 14.

MOBILE FOOD UNIT. A self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service that is readily movable without disassembling, or as defined in M.S. § 157.15, Subd. 9.

REGULATORY AUTHORITY. As used in Minn. Rules Chapter 4626, the city's Code Enforcement and Public Health Division, its designated employees, or other designated agents.

(Ord. 2001-958, passed 10-22-01; Am. Ord. 2014-1177, passed 7-7-14)

§ 114.04 LICENSE ADMINISTRATION.

(A) *License required.* It is unlawful to operate a food establishment within the city or engage in any enterprises described herein, unless a license has been obtained. Each license must be obtained in accordance with the requirements of the city code.

(B) *General licensing.* The application for such licenses must be made on forms furnished by the city and must describe the general nature of the business, the location, and any other information deemed necessary by the city.

(C) *License expiration.* Licenses issued pursuant to this chapter commence and expire on the dates indicated on the license certificate. With the exception of the itinerant food establishment licenses, all food establishment licenses will be issued for the applicable license year. Itinerant food establishment licenses will be issued for the specific days that the itinerant food establishment is in operation.

(D) *Transfer and display of license.* Only a person who complies with the requirements of this chapter is entitled to receive a license. A license is not transferable as to person or place. A valid license must be located onsite and available to the public upon

request.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

§ 114.05 LICENSE FEES; EXEMPTIONS; REINSPECTION FEES.

(A) *Fees.* Fees for licenses issued hereunder must be in the amount set forth by the Council. An additional fee will be charged for each additional service or operation that is separate, distinct or unique from the central or main food establishment, as determined by the Health Authority.

(B) *Late fees.* If work has commenced prior to approval of construction or remodeling, or license fees are submitted after the annual license date, additional fees will be assessed according to the fees set forth by the Council.

(C) *Fee exemptions.* Food establishments operated by governmental subdivisions, charitable institutions, places of worship, or non-profit agencies are required to obtain a license and comply with the provisions of this chapter, but are not required to pay a fee.

(D) *Reinspection fees.* A reinspection fee will not be charged for the first reinspection conducted to determine correction of a code violation. A reinspection fee, as set forth by the Council, may be charged for each subsequent reinspection.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

§ 114.06 INSPECTIONS.

(A) *Inspection required.* The Health Authority will inspect each food establishment prior to issuing a license for a new establishment, as part of a construction or remodeling plan review, as part of a complaint investigation, or for routine inspection. A license will not be issued until the food establishment meets the standards of this chapter as demonstrated by a satisfactory inspection.

(B) *Construction inspection.* The food establishment must be constructed in conformance with the approved plans. A building permit will not be issued for a food establishment for remodeling or alteration for such establishment until such plans have the approval of the Health Authority. The Health Authority will inspect the food establishment as frequently as necessary during construction to ensure that construction occurs in conformance with this chapter. The food establishment owner, operator, or person-in-charge must contact the Health Authority and obtain a final inspection prior to the start of operations and issuance of a license or to resume operations after remodeling.

(C) *Access to premises and records.* The person operating the food establishment must, upon request of the Health Authority and after proper identification, permit access to all parts of the establishment at any reasonable time for the purpose of inspection and must exhibit and allow copying of any records necessary to ascertain sources of food.

(D) *Interference with Health Authority.* It is unlawful to interfere with or hinder the Health Authority in the performance of its duties, or refuse to permit the Health Authority to make such inspections.

(E) *Removal and correction of violations.* The owner, or operator, or person-in-charge of a food establishment, upon receipt of a report giving notification of one or more violations of this chapter, must correct or remove each violation in a reasonable length of time as determined by the Health Authority. The length of time for the correction or removal of each such violation will be noted on the inspection report. Failure to remove or correct each violation within the time period noted on the inspection report constitutes a separate violation of this chapter. The Health Authority may issue orders to halt construction or remodeling, or to take corrective measures to ensure compliance with this chapter.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

§ 114.07 EMERGENCY CLOSURE.

If any of the following conditions exist, the operator may be ordered to discontinue all operations of the food establishment:

(A) Failure to possess a license required by this chapter;

(B) Evidence of a sewage backup in a food preparation, food storage, or utensil washing area;

(C) Lack of potable, plumbed, hot or cold water to the extent that hand washing , utensil washing, food preparation, or toilet

facilities are not operational;

(D) Lack of electricity or gas service to the extent that hand washing, utensil washing, food preparation, lighting, or toilet facilities are not operational;

(E) Evidence of an ongoing foodborne illness associated with the operation of the establishment;

(F) Significant damage to the food establishment due to tornado, fire, flood, or other disaster;

(G) Evidence of infestation of rodents or other vermin;

(H) Evidence of cross contamination, filthy conditions, untrained staff or poor personal hygiene;

(I) Lack of an effective means of sanitizing dishes or utensils; or

(J) Any time an immediate health or safety hazard or public health nuisance exists.

(Ord. 2001-958, passed 10-22-01)

§ 114.08 PROCEDURES FOR EMERGENCY CLOSURE.

(A) *Notification*. The Health Authority, with the approval of the City Manager, may immediately close a food establishment if a violation is found that constitutes an imminent health or safety hazard. After written notice is provided, the food establishment operator must immediately cease operation. The notice must identify the food establishment, describe the specific grounds for closure of the establishment, direct the immediate closure of the establishment and vacating of the premises by consumers, list the corrective actions necessary to re-open the establishment, and state that a hearing on the emergency closure may be requested by the licensee. The notice must be served upon the owner, food establishment operator, or person-in-charge.

(B) *Reopening process*. The person-in-charge or person receiving the order must close the establishment and ensure the premises is vacated in accordance with the notice. The establishment must remain closed until the Health Authority rescinds the order for emergency closure. When the food establishment operator notifies the health authority that the violations have been corrected, the Health Authority must re-inspect the food establishment within a reasonable length of time. If all violations constituting the ground for emergency closure have been corrected, the Health Authority must reopen the establishment.

(C) *Appeal process*. The licensee may appeal the temporary suspension and request a hearing in writing as to the conditions, if any, to be imposed for reopening the food establishment. The hearing must be held within two business days. A written decision must be made within two business days after the conclusion of the hearing.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

§ 114.09 STANDARDS FOR HEALTH, SAFETY AND NUISANCE PREVENTION.

(A) The food establishment licensee must receive approval from the Health Authority prior to implementing the provisions in Minn. Rules 4626.0010 et seq.

(B) A hand washing lavatory must be equipped to provide water to the user at a temperature of at least 43 C. (110 F.), but not more than 54 C. (130 F.) in a food establishment and not more than 48 C. (120 F.) in a sink that is used by children, such as a school, day care or preschool, through a missing valve or combination faucet.

(C) Materials for indoor floor, wall, and ceiling surfaces under conditions of normal use must be non-absorbent and resistant to the wear and abuse to which they are subjected. Materials such as, but not limited to, quarry tile, ceramic tile, or terrazzo are approved for floor surfaces in food preparation areas, walk-in refrigerators, walk-in freezers, warewashing areas, toilet rooms, mobile food establishment servicing areas, handwash areas, janitorial areas, laundry areas, interior garbage and refuse storage rooms, wait stations, kitchens, bars, areas subject to flushing or spray cleaning methods, and other areas subject to moisture.

(D) A supply of toilet tissue in a mounted dispenser must be available at each toilet.

(E) The plans and specifications for a food establishment must include the proposed layout to scale, mechanical schematics, construction materials, and finish schedules.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

§ 114.10 INDUSTRY SELF-SURVEY AND TRAINING RESPONSIBILITY.

Every licensee or person-in-charge of a food establishment must arrange for and maintain a program of sanitation self-inspection conducted by the owner, person-in-charge, or designated agent as approved by the Health Authority. The self-inspection program must include written policies, employee training procedures, appropriate forms for logging self-inspections, and evidence that routine self-inspection of all aspects of the food establishment takes place. A description of the food establishment operation, including the menu, must be available for review.

(Ord. 2001-958, passed 10-22-01) Penalty, see § 10.99

CHAPTER 115: [RESERVED]

CHAPTER 116: [RESERVED]

CHAPTER 117: LODGING AND HOUSING ESTABLISHMENTS

Section

LODGING ESTABLISHMENTS

§ 117.25 ADDITIONAL PROVISIONS.

Except as otherwise modified in this chapter, the following provisions, including all future revisions to them, in Minnesota Statutes and Minnesota Rules, are adopted and incorporated by reference into this chapter:

(A) M.S. Chapter 157, except § 157.16;

(B) M.S. §§ 327.10 through 327.131 and §§ 327.70 through 327.76; and

(C) Minn. Rules Chapter 4625.

(Ord. 2012-1135, passed 3-26-12)

§ 117.26 LICENSE REQUIRED.

It is unlawful for any person to operate a lodging establishment unless the City of Brooklyn Park has issued a valid license, including plan review approval. The license must be on display in the immediate vicinity of the customer registration area and conveniently accessible upon demand.

('72 Code, § 456:05) (Ord. 1976-230(A), passed - -; Am. Ord. 2012-1135, passed 3-26-12) Penalty, see § 10.99

§ 117.27 APPLICATION FOR LICENSE.

Application for license hereunder must be submitted to the Licensing Division in such form and manner as the City Clerk may prescribe.

('72 Code, § 456:10) (Ord. 1976-230(A), passed - -)

§ 117.28 INSPECTION.

The Code Enforcement & Public Health Division or designated agent must inspect every lodging establishment as frequently as deemed necessary to insure compliance with this subchapter.

('72 Code, § 456:15) (Ord. 1976-230(A), passed - - ; Am. Ord. 2012-1135, passed 3-26-12)

§ 117.29 LICENSE EXPIRATION AND RENEWAL.

Licenses issued under this subchapter expire on the last day of December each year. License renewal applications must be filed

with the Licensing Division prior to the expiration date each year.

('72 Code, § 456:20) (Ord. 1976-230(A), passed - -)

§ 117.30 LICENSING REGULATIONS AND FEES.

License application and possession is subject to § 110.37 of this code. The annual license fee for a lodging establishment is set by the Appendix to this code.

('72 Code, § 456:25) (Ord. 1976-230(A), passed - -)

RENTAL ESTABLISHMENTS

§ 117.40 PURPOSE.

It is the purpose of this subchapter to protect the public health, safety and welfare of the residents of rental dwellings in the City of Brooklyn Park and to ensure that rental housing in the city is safe, sanitary and operated and maintained not to become a nuisance to the neighborhood and community. The operation of rental residential properties is a business enterprise that entails certain responsibilities.

('72 Code, § 455:00) (Am. Ord. 1990-667(A), passed 12-17-90; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2008-1090, passed 7-7-08)

§ 117.41 INTENT.

It is the intent of this subchapter that a permanent mode of protecting and regulating the living conditions of citizens of the city be established; and that uniform standards be established and applicable for all rental dwellings in the city. This subchapter is not construed or interpreted to supersede or limit any other such applicable ordinance or law. This subchapter applies to all rental dwellings whether or not a valid license is in effect. City staff will review this subchapter on an annual basis.

('72 Code, § 455:05) (Am. Ord. 1983-421(A), passed 5-9-83; Am. Ord. 1996-795, passed 1-22-96; Am. Ord. 2008-1090, passed 7-7-08)

§ 117.42 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

APARTMENT. A community, complex, or building having a common owner and containing 16 or more living units.

CERTIFICATE OF COMPLIANCE. Document issued by the city, stating that the building has been inspected and is in compliance with applicable property maintenance codes and ordinances.

CITY MANAGER . The City Manager or the City Manager's designated agent

DWELLING. A building or one or more portions thereof occupied or intended to be occupied for residence purposes; but not including rooms in motels, hotels, nursing homes, boarding houses, trailers, tents, cabins or trailer coaches.

GENERAL HOUSING UNIT. A dwelling other than an apartment, including but not limited to a townhouse, condominium, double bungalow, residential zero lot line (split double), single family or tri-plex.

LET FOR OCCUPANCY or ***TO LET.*** To permit possession or occupancy of a dwelling or living unit by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease, or pursuant to a recorded or unrecorded agreement whether or not a fee is required by the agreement.

LIVING UNIT. A single unit providing complete, independent living facilities for one or more persons including permanent

provisions for living, sleeping, eating, cooking and sanitation.

OCCUPANT. Any person living or sleeping in a dwelling; or having possession of a space within a dwelling.

OPERATE. To let for occupancy or to let.

OPERATOR/MANAGER. Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

OWNER/LICENSEE. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court, or any person representing the actual owner.

PERSON. An individual, corporation, firm, association, company, partnership, organization or any other group acting as a unit.

RENT. To let for occupancy or to let.

RENTAL DWELLING. Any apartment or general housing unit let for occupancy.

SMALL APARTMENT . A community, complex, or building containing four or more or fewer than 16 living units.

STRUCTURE. Anything constructed or erected on, or connected to the ground.

('72 Code, § 455:10) (Am. Ord. 1983-421(A), passed 5-9-83; Am. Ord. 1996-795, passed 1-22-96; Am. Ord. 2001-956, passed 8-13-01; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2002-987, passed 12-16-02; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2005-1036, passed 5-23-05; Am. Ord. 2007-1068, passed 2-20-07)

§ 117.43 LICENSE REQUIRED.

It is unlawful to operate a rental dwelling in the city without first having obtained a license from the City Manager. Each general housing unit and each apartment complex must register annually with the City Manager. No license is required under this subchapter when an owner occupies a living unit as a permanent residence. Failure to obtain a rental license may result in the issuance of administrative citations and fines and any other civil or criminal penalties available to the city.

('72 Code, § 455:15) (Am. Ord. 1996-795, passed 1-22-96; Am. Ord. 2001-956, passed 8-13-01; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2007-1068, passed 2-20-07; Am. Ord. 2008-1090, passed 7-7-08) Penalty, see § 10.99

§ 117.44 LICENSE PERIOD.

Apartment licenses are valid from July 1 through June 30 of the following year. General housing unit licenses and licenses for small apartments are valid from October 1 through September 30.

('72 Code, § 455:16) (Ord. 1996-795, passed 1-22-96; Am. Ord. 2001-956, passed 8-13-01; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2002-987, passed 12-16-02; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2005-1036, passed 5-23-05; Am. Ord. 2007-1068, passed 2-20-07)

§ 117.45 FEES.

License fees are in the amount set by the Council.

('72 Code, § 455:17) (Ord. 1996-795, passed 1-22-96; Am. Res. 2001-188, passed 8-13-01)

Cross-reference:

License fees, see Appendix

§ 117.46 APPLICATION.

(A) Applications for licenses must be made in writing to the City Manager by the owner or operator. Failure to complete a license application may result in delay or suspension of the application process and civil and criminal penalties. In cases where the owner of a rental dwelling lives outside a 50-mile radius of the rental dwelling, the owner must name an operator living within the 50-mile radius of the rental dwelling.

(B) All applications must specify the following:

(1) Owner's name, address and telephone number. In cases where the owner is an individual, one of the following is required: driver's license number, state identification number, or date of birth.

(2) Operator's name, address, phone number and driver's license number or state identification number or date of birth.

(3) Signature of owner or operator.

(4) Name, address and phone number of management company, manager or managing officer.

(5) Legal address of the rental dwelling.

(6) Number and type of living units within the rental dwelling.

(7) Date of the most recent certificate of compliance.

(8) E-mail address, when available.

('72 Code, § 455:26) (Ord. 1996-795, passed 1-22-96; Am. Ord. 2001-956, passed 8-13-01; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2008-1090, passed 7-7-08)

§ 117.47 LICENSE TRANSFER.

No licensee has the right to transfer a license to any other person or property.

('72 Code, § 455:36) (Ord. 1996-795, passed 1-22-96) Penalty, see § 10.99

§ 117.48 DISPLAY OF LICENSE.

Rental licenses must be posted in every rental dwelling. The license for each apartment building must be conspicuously posted at or near the front entrance, a public corridor, hallway or lobby of the apartment building for which it is issued. The annual license for general housing units must be posted within the dwelling.

('72 Code, § 455:40) (Am. Ord. 1983-421(A), passed 5-9-83; Am. Ord. 1990-667(A), passed 12-17-90; Am. Ord. 1996-795, passed 1-22-96; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2008-1090, passed 7-7-08) Penalty, see § 10.99

§ 117.481 REPORT CHANGES IN OWNERSHIP.

Licensees must report to the City Manager any changes in the identity of the owner of a rental dwelling, including a change in the majority shareholder or shareholders and officers in the case of corporations. Licensees must report a change in ownership at least 30 days before closing.

(Ord. 2002-975, passed 6-10-02; Am. Ord. 2003-1007, passed 10-27-03; Am. Ord. 2004-1021, passed 11-15-04)

§ 117.482 TENANT REGISTER.

Licensees must, as a continuing obligation of a license, maintain a current register of tenants and other persons who have a lawful right to occupancy of rental dwellings within an apartment. In its application, the licensee must designate the person or persons who will have possession of the register and must promptly notify the City Manager of any change of the identity, address or telephone

numbers of such persons. The register must be available for inspection by the City Manager at all times.

(Ord. 2002-975, passed 6-10-02)

§ 117.483 RESPONSIBILITY FOR ACTS OF MANAGER.

Licensees are responsible for the acts or omissions of their managers and operators.

(Ord. 2002-975, passed 6-10-02; Am. Ord. 2008-1090, passed 7-7-08)

§ 117.484 NO RETALIATION.

No licensee shall evict, threaten to evict or take any other punitive action against any tenant by reason of good faith calls made by such tenant to law enforcement agencies relating to criminal activity, suspected criminal activity, suspicious occurrences or public safety concerns. This section shall not prohibit the eviction of tenants for unlawful conduct of a tenant or invitee of the tenant or violation of any rules, regulations or lease terms other than a prohibition against contacting law enforcement agencies.

(Ord. 2002-975, passed 6-10-02)

§ 117.485 POINT OF CONVERSION INSPECTION.

Whenever a dwelling is converted to a licensed rental dwelling, the dwelling shall be licensed and inspected for compliance with the minimum standards set forth in § 117.52 of this code. The fee for the conversion required by this section shall be in the amount set by the City Council. This fee shall be in addition to the annual rental license fee. This provision shall not apply to buildings containing more than two dwelling units.

(Ord. 2002-975, passed 6-10-02; Am. Ord. 2003-1007, passed 10-27-03; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2008-1087, passed 5-27-08; Am. Ord. 2008-1093, passed 8-25-08)

§ 117.49 CONDUCT ON RENTAL PROPERTY.

(A) It is the responsibility of the owner/licensee to see that persons occupying a rental dwelling conduct themselves in such a manner as not to cause the premises to be disorderly. For purposes of this section, a rental dwelling is disorderly when any of the following types of conduct occur under any of the following provisions:

(1) §§ 92.05 and 92.06 of this code (animal noise and public nuisances).

(2) § 134.03 of this code (noisy parties).

(3) Chapter 135 of this code (unlawful possession, delivery or purchase) or violation of laws relating to the possession of controlled substances as defined in M.S. §§ 152.01 et seq.

(4) §§ 134.15 et seq. of this code (disorderly conduct) or laws relating to disorderly conduct as defined in M.S. § 609.72.

(5) §§ 112.030 through 112.069 of this code (unlawful sale of intoxicating liquor or 3.2 malt liquor) or laws relating to the sale of intoxicating liquor as defined in M.S. §§ 340A.701, 340A.702 or 340A.703.

(6) Laws relating to prostitution or acts relating to prostitution as defined in M.S. § 609.321, Subdivision 9 and 609.324, housing individuals engaged in prostitution.

(7) Chapter 136 of this code (weapons) or laws relating to unlawful use or possession of a firearm as defined in M.S. §§ 609.66 et seq., on the licensed premises.

(8) § 134.01 of this code (assaults) or laws relating to assault.

(9) Laws relating to contributing to the need for protection or services or delinquency of a minor as defined in M.S. § 260C, et seq.

(10) M.S. § 609.33, relating to owning, leasing, operating, managing, maintaining or conducting a disorderly house or inviting or attempting to invite others to visit or remain in a disorderly house.

(11) M.S. § 609.50 which prohibits interference with a police officer.

(12) M.S. § 609.713 which prohibits terroristic threats.

(13) M.S. § 609.715 which prohibits presence of unlawful assembly.

(14) M.S. § 609.71 which prohibits riot.

(15) M.S. §§ 609.226 and 347.56, relating to dangerous dogs.

(16) M.S. § 609.78 which prohibits interfering with "911" phone calls.

(17) M.S. §§ 609.75 through 609.76, which prohibits gambling.

(18) M.S. § 243.166 (Predatory Offender Registration).

(19) M.S. § 609.229 (Crime committed for benefit of a gang).

(20) M.S. § 609.26, subdivision 1(8) (causing or contributing to a child being a runaway).

(21) M.S. § 609.903 (Racketeering).

(B) Conduct enforcement. The City Manager is responsible for enforcement and administration of this section.

(C) Upon determination by the City Manager that a rental dwelling was used in a disorderly manner, as described in paragraph (A) of this section, the City Manager must give notice to the owner/licensee of the violation and direct that steps be taken to prevent further violations.

(D) If a second instance of disorderly use of a rental dwelling occurs within the 12-month period following an incident for which a notice in paragraph (C) of this section was given, the City Manager must notify the owner/licensee of the violation and must also require the owner/licensee to submit a written report of the actions taken, and proposed to be taken to prevent further disorderly use. This written report must be submitted to the City Manager within ten business days of receipt of the notice of disorderly use and must detail all actions taken by the owner/licensee in response to all notices of disorderly use within the preceding 12 months.

(E) (1) If a third instance of disorderly use of a rental dwelling occurs within the 12-month period following any two previous instances of disorderly use for which notices were given, the City Manager must notify the owner/licensee of the violation and must also require the owner/licensee to submit a written report of the actions taken, and proposed to be taken, to prevent further disorderly use. The 12-month period begins on the date of the police report generated in response to the first instance of disorderly use. The written report must be submitted to the City Manager within ten business days of receipt of the notice of disorderly use and must detail all actions taken in response to all notices of disorderly use within the preceding 12 months.

(2) After the third instance of disorderly use, the City Manager may deny, revoke, suspend or not renew the license for the premises. Before such an action, the City Manager must give to the owner/licensee written notice of a hearing before the City Hearing Officer to consider such denial, revocation, suspension or non-renewal. Such written notice must specify all violations of this section, and must state the date, time, place and purpose of the hearing. The hearing must be held no less than ten days and no more than 30 days after giving such notice.

(3) Following the hearing, the City Manager may deny, revoke, suspend or decline to renew the license for all or any part or parts of the rental dwelling or may grant a license upon such terms and conditions as it deems necessary to accomplish the purposes of this section.

(4) Appeals of any decision made by the City Manager must be filed in Hennepin County District Court.

(5) Upon a decision to revoke, suspend, deny or not renew a license for violations of this section, the owner/licensee will not be eligible for any new rental licenses for a period determined by the City Manager, but not to exceed one year. Any person who has had two or more licenses revoked, suspended, denied or not renewed for violations of this section, will not be eligible for any new rental licenses for a period determined by the City Manager, but not to exceed two years.

(F) No adverse license action shall be imposed where the instance of disorderly use occurred during the pendency of eviction proceedings (unlawful detainer) or within 30 days of notice given to a tenant to vacate the premises where the disorderly use was related to conduct by that tenant or by other occupants or guests of the tenant's unit. Eviction proceedings are not a bar to adverse

license action, however, unless they are diligently pursued by the licensee.

(G) A determination that a rental dwelling has been used in a disorderly manner as described in paragraph (A) of this section shall be made upon a fair preponderance of the evidence to support such a determination. It is not necessary that criminal charges be brought in order to support a determination of disorderly use nor does the fact of dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this section.

(H) All notices given by the city under this section must be personally served on the owner/licensee, sent by certified mail to the owner/licensee's last known address or, if neither method of service effects notice, by posting on a conspicuous place on the rental dwelling.

(I) Enforcement actions provided in this section are not exclusive, and the City Manager may take any action with respect to a licensee, a tenant, or a rental dwelling as is authorized by the city code, state or federal law. The City Manager may postpone or discontinue any enforcement action, including an action to deny, revoke, suspend, or not renew a license, if it appears that the owner/licensee has taken appropriate measures to prevent further instances of disorderly use.

('72 Code, § 455:50) (Ord. 1992-710, passed - - ; Am. Ord. 2002- 975, passed 6-10-02; Am. Ord. 2008-1090, passed 7-7-08; Am. Ord. 2016-1208, passed 9-26-16) Penalty, see § 10.99

§ 117.491 MINNESOTA CRIME FREE MULTI-HOUSING PROGRAM.

(A) The city has established a rental owner educational program consistent with the Minnesota Crime Free Multi-housing Program. This educational program will include, but is not limited to information such as: applicant screening, rental agreements, identification of illegal activity, eviction process, the roles of working with the police, crime prevention, code enforcement and public health, licensing and inspections, and active property management. The following are requirements of the program:

(1) All owners or operators must attend one of these regularly-scheduled seminars within one year of the issuance of a new rental license.

(2) Owners or operators possessing rental licenses issued prior to the enactment of this section will be required to attend the Crime Free Housing Program within one year of the renewal their rental license.

(3) The owner or operator of a property notified of a third instance of disorderly use under § 117.49 will be required to attend the next available Brooklyn Park Crime Free Housing Program to maintain their rental license.

(4) Program attendees will be required to pay a participation fee in an amount determined to cover the direct cost of the program.

(B) An owner whose only rental dwelling is a single-family dwelling homesteaded by a relative is exempted from the program.

(C) All tenant leases signed following the enactment of this section, except for state-licensed residential facilities and subject to all preemptory state and federal laws, shall contain the following Crime Free Housing Addendum language:

(1) Resident, any members of the resident's household or a guest or other person affiliated with resident shall not engage in criminal activity, including drug-related criminal activity, on or near the premises.

(2) Resident, any members of the resident 's household or a guest or other person affiliated with resident shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the premises.

(3) Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

(4) Resident, any member of the resident's household or a guest, or other person affiliated with the resident shall not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of a controlled substance at any locations, whether on or near the premises or otherwise.

(5) Violation of the above provisions shall be a material and irreparable violation of the lease and good cause for immediate termination of tenancy.

(6) The term ***DRUG RELATED CRIMINAL ACTIVITY*** means the illegal manufacture sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance or any substance represented to be drugs (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]).

(7) Non-exclusive remedies. The Crime Free Housing Addendum language is in addition to all other terms of the lease and does not limit or replace any other provisions.

(D) Upon determination by the City Manager that a licensed premises or unit within a licensed premises was used in violation of the Crime Free Housing Addendum language, the City Manager shall notify the owner and property manager of the violation. The owner or property manager shall notify the tenant or tenants within ten days of the notice of violation of the Crime Free Housing Addendum language and proceed with the termination of the tenancy of all tenants occupying the unit. The owner shall not enter into a new lease with the evicted tenant for a period of one year after the eviction. If the owner or property manager fails to comply with this section, the City Manager may initiate an action to deny, revoke, suspend, or not renew the license following the same process as outlined in § 117.49(E)(2) - (5).

(Ord. 208-1090, passed 7-7-08; Am. Ord. 2016-1208, passed 9-26-16)

§ 117.50 LANDSCAPE CONDITION.

Each rental dwelling must be maintained by its owner, occupant, or operator so that the yards, open spaces and parking facilities are kept in a safe and attractive condition. Where a conditional use permit has been granted, the landscaping shown on the approved landscaping plan is considered as minimal and must be maintained accordingly. Any deviation to species or material shall be equal to or better than originally approved. In addition, adequate lighting facilities must be provided and operated between the hours of sunset and sunrise; and snow plowing or snow shoveling must be regularly accomplished to maintain all sidewalk and parking areas in a safe and passable condition.

('72 Code, § 455:70) (Am. Ord. 1983-421(A), passed 5-9-83; Am. Ord. 2002-975, passed 6-10-02) Penalty, see § 10.99

§ 117.51 SAFETY FROM FIRE.

An owner or operator of a rental dwelling is responsible to comply with the applicable provisions of the Fire Prevention Code of the city in keeping open all fire lanes established by the city.

('72 Code, § 455:75) (Am. Ord. 1983-421(A), passed 5-9-83; Am. Ord. 2002-975, passed 6-10-02) Penalty, see § 10.99

§ 117.52 ENFORCEMENT.

(A) *Responsibility.* It is the responsibility of the owner and operator/manager to be in compliance with this subchapter, other city ordinances and state laws.

(B) *Maintenance standards.* Every rental dwelling must maintain the standards in the city property maintenance code, Chapter 106 of this code, in addition to any other requirement of the ordinances of the city or special permits issued by the city, or the laws of the State of Minnesota.

(C) *Inspections and investigations.*

(1) The City Manager is authorized to make inspections to enforce this subchapter.

(2) All designated agents authorized to inspect have the authority to enter, at all reasonable times, any rental dwelling. Prior to entering a rental dwelling, the designated agent must first present proper credentials and request entry. If any owner, operator, occupant or other person(s) in charge of a rental dwelling fails or refuses to permit access and entry to the rental dwelling, or any part thereof, the designated agent may, upon showing that probable cause exists for the inspection and for the issuance of an order directing compliance with the inspection requirements of this section, petition and obtain such order from a court of competent jurisdiction in order to secure entry.

(3) Compliance orders must be written in accordance with § 107.00 of the International Property Maintenance Code.

(4) There is no fee charged for an initial inspection to determine the existence of a housing maintenance code violation, nor any fee for the first reinspection to determine compliance with an order to correct a housing maintenance code violation.

(a) A fee will be charged for each subsequent re-inspection occurring after the due date for compliance with an order, as determined by the City Manager. The amount of the re-inspection fee will be set by resolution of the council as listed in the Appendix

of this code.

(b) The re-inspection fees prescribed above are to be billed directly to the owner or operator/manager for the property upon completion of any re-inspection for which a fee is required. Failure to pay such fees is grounds for revocation, suspension, or non-issuance of a rental dwelling license. This subdivision is not to be considered the exclusive method of collecting re-inspection fees and does not preclude collection by other lawful means.

(c) Every notice of violation and order to correct housing code violations must contain a clear and conspicuous explanation of the policy in this section requiring re-inspection fees for subsequent re-inspection.

(d) The City Manager may waive a re-inspection fee in case of error, mistake, injustice, or other good cause.

(D) *Revocation, suspension, denial or non-renewal of license.*

(1) The City Manager may revoke, suspend, deny or decline to renew any license issued under this subchapter for part or all of a rental dwelling upon any of the following grounds:

(a) False statements on any application or other information or report required by this subchapter to be given by the applicant or licensee;

(b) Failure to pay any application, penalty, reinspection or reinstatement fee required either by this section or City Council resolution;

(c) Failure to correct deficiencies in the time specified in a compliance order;

(d) Failure to allow an authorized inspection of a rental dwelling;

(e) Violation of an owner's duties under M.S. §§ 299C.66 to 299C.71 ("Kari Koskinen Manager Background Check Act");

(f) Failure to comply with the Minnesota Crime Free Multi-housing Program requirements in § 117.491.

(g) Any other violation of this subchapter.

(2) Before the City Manager may revoke, suspend, deny or not renew a license, written notice must be sent to the applicant or owner/licensee setting forth the alleged grounds for the potential action. The notice must also specify a date for a hearing before the Hearing Officer, which must not be less than ten days from the date of the notice. At the hearing, the owner/licensee may present witnesses in their defense. The Hearing Officer may give due regard to the frequency and seriousness of violations, the ease with which such violations could have been cured or avoided and good faith efforts to comply and shall issue written findings.

(3) Upon a decision to revoke, deny or not renew a license, the owner/licensee will not be eligible for any new rental licenses for a period determined by the City Manager, but not to exceed one year.

(4) A decision to revoke, suspend, deny or not renew a license or application will specify the part or parts of the rental dwelling to which it applies. Until a license is reissued or reinstated, no rental units becoming vacant in such part or parts of the rental dwelling may be relet or occupied. Revocation, suspension or non-renewal of a license will not excuse the owner/licensee from compliance with all terms of this section for as long as any units in the rental dwelling are occupied.

(5) Failure to comply with all terms of this section during the term of revocation, suspension or non-renewal is a misdemeanor and grounds for extension of the term of revocation, suspension or continuation of non-renewal of the license.

(6) Appeals of any decision made by the City Manager must be filed in Hennepin County District Court.

(E) *[Reserved].*

(F) *Summary action.*

(1) When the conduct of any owner/licensee or their agent, representative, employee or lessee or the condition of their rental dwelling is detrimental to the public health, sanitation, safety and general welfare of the community at large or residents of the rental dwelling as to constitute a nuisance, fire hazard or other unsafe or dangerous condition and thus give rise to an emergency, the City Manager has the authority to summarily condemn or close off individual units or such areas of the rental dwelling. Notice of summary condemnation must be posted at the location of the rental dwelling license and at the units or areas affected and shall indicate the units or areas affected. Upon notice of summary condemnation, the City Manager may deny, revoke, suspend or decline to renew the license for all or any part or parts of the rental dwelling or may impose terms and conditions as necessary to remedy the nuisance, fire hazard, or other unsafe or dangerous condition.

(2) Any person aggrieved by a decision or action of the City Manager under paragraph (F) shall be entitled to appeal by filing a notice of appeal in the office of the City Manager. The appeal must be filed within ten days of the City Manager's decision. The City Manager will schedule a date for a hearing before the Hearing Officer and notify the aggrieved person of the date. At the hearing, the owner/licensee may present witnesses in their defense. The Hearing Officer may give due regard to the frequency and seriousness of violations, the ease with which such violations could have been cured or avoided and good faith efforts to comply and shall issue written findings.

(3) The decision of the City Manager is not voided by the filing of such appeal. Only after the Hearing Officer has held its hearing will the decision or action of the City Manager be affected.

(G) *Posting of unlicensed properties*. Any dwelling found in violation of § 117.43 of this subchapter may be posted with a placard near or upon the main entrance of the dwelling and must be substantially in the following form:

NOTICE
Property Address
This property is in violation of Brooklyn Park Ordinance Section 117:43, License Required. Failure to obtain a rental license will result in legal action. Any unauthorized person removing or defacing this notice will be prosecuted.
Division...Designated Agent...Date

('72 Code, § 455:78) (Ord. 1996-795, passed 1-22-96; Am. Ord. 2001- 956, passed 8-13-01; Am. Ord. 2002-975, passed 6-10-02; Am. Ord. 2003-1007, passed 10-27-03; Am. Ord. 2004-1021, passed 11-15-04; Am. Ord. 2005-1036, passed 5-23-05; Am. Ord. 2008-1090, passed 7-7-08; Am. Ord. 2016-1208, passed 9-26-16)

§ 117.521 ASSESSMENT OF UNPAID ADMINISTRATIVE PENALTIES.

Any unpaid administrative penalty for failure to comply with the rental licensing provisions in §§ 117.40 through 117.52 of this code may be assessed against the property in the manner set forth in § 37.08 of this code.

(Ord. 2009-1103, passed 9-8-09)

§ 117.53 REMOVAL OF SNOW AND ICE.

The owner of any rental dwelling is responsible for the removal of snow and ice from parking lots, driveways, steps and walkways on the premises. Individual snowfalls of three inches or more, or successive snowfalls accumulating to a depth of three inches must be removed from walkways and steps within 48 hours after the cessation of the snowfall.

(Ord. 2001-956, passed 8-13-01) Penalty, see § 10.99

CHAPTER 118: EXCAVATIONS AND EARTH MOVING

Section

§ 118.01 PERMIT REQUIRED.

It is unlawful for any person, firm, or corporation to remove, store or excavate rock, sand, dirt, gravel, clay or other like material in the amount of more than 200 cubic yards without obtaining an earth moving permit from the City Engineer.

('72 Code, § 340:00) Penalty, see § 10.99

§ 118.02 EXCEPTIONS.

(A) *Basements.* No permit is required for the excavation, removal or storage of rock, sand, dirt, gravel, clay or other like material for the purpose of the foundation, cellar or basement of some immediately pending superstructure to be erected, built, or placed thereon contemporaneously with, or immediately following such excavation, removal or storage, providing a building permit has been issued.

(B) *Road construction.* No permit is required for such excavations, removal or storage of rock, sand, dirt, gravel, clay or other like material as may be required by the state, county or city authorities in connection with the construction or maintenance of roads and highways.

('72 Code, § 340:05)

§ 118.03 APPLICATION.

The application must be made in writing on such form as the city may from time to time designate, and must include such information as may be required by the City Engineer and shall contain, among other things:

(A) The correct legal description of the premises where the excavation, removal or storage of rock, sand, dirt, gravel, clay or other like material shall or does occur.

(B) The name and address of the applicant and owner of the land.

(C) The purpose of the removal, storage or excavation.

(D) The estimated time required to complete the removal, storage or excavation.

(E) The highways, streets or other public ways within the city upon and along which the material excavated or removed is to be transported.

(F) A map or plat of the proposed pit or excavation to be made showing the confines or limits thereof together with the proposed finished elevations based on sea level readings.

('72 Code, § 340:10)

§ 118.04 FILING AND FEES.

Each application must be filed with the City Engineer. A permit fee in an amount set by the Council from time to time must accompany each application.

('72 Code, § 340:15)

Cross-reference:

License fees, see Appendix

§ 118.05 REQUIREMENTS.

As a pre-requisite to the granting of a permit, or after a permit has been granted, the applicant or the owner of the premises must comply with the requirements of the following:

(A) Properly fence any pit or excavation to protect the safety of the public.

(B) Slope the banks, and otherwise guard and keep any pit or excavation in such condition as not to be dangerous because of sliding or caving banks.

(C) Properly drain, fill or level off any pit or excavation so as to make the same safe and healthful.

(D) Reimburse the city for the cost of periodic inspections by the City Engineer, or other city employee, for the purpose of seeing that the terms under which the permit has been issued are being complied with.

(E) The permit must include as a condition thereof a plan for a finished grade which will not adversely affect the surrounding land or the development of the site on which the excavating is being conducted, and the permitted route of trucks moving to and from the site.

(F) Post a surety bond, in such form and sum as the city may require, running to the city, conditioned to pay the city the cost and expense of repairing any highways, streets, or other public ways 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 like material, the amount of such cost to be determined by the City Engineer; and conditioned further to comply with all the requirements of this subchapter and the particular permit, and to save the city free and harmless from any and all suits or claims for damages resulting from the negligent excavation, removal or storage of rock, sand, dirt, gravel, clay, or other like material within the city.

(G) And such other requirements as the City Engineer or Council from time to time deems proper and necessary for the protection of the citizens and the general welfare.

(H) Such permit must not be granted for a period of longer than 12 months, but may be renewed by the City Engineer.

('72 Code, § 340:20)

§ 118.06 VIOLATIONS AND NUISANCES.

A person, firm or corporation that refuses, neglects or fails to comply with any requirement made of that person, firm or corporation under the provisions of § 118.05 as promptly as same can be reasonably done, is guilty of a penal offense and the Council may revoke the permit issued, and in addition to other penalties prescribed herein, the failure to comply with such requirement, after notice, and the continuing excavation, removal or storage of rock, sand, gravel, dirt, clay, or other like material on the premises is prima facie evidence of a public nuisance and may be abated by court action.

('72 Code, § 340:25) Penalty, see § 10.99

Cross-reference:

Nuisances, see §§ 94.01 et seq.

§ 118.07 LAND RECLAMATION PERMIT.

Land reclamation under this subchapter is the reclaiming of land by depositing of material so as to elevate the grade. Land reclamation is permitted only after issuance of a special permit in all districts on any lot or parcel upon which 200 cubic yards or more of fill is to be deposited for land reclamation. Fill materials shall be approved by the City Engineer as suitable to the final use of the property. Fill materials must conform to the following minimum requirements: The material must not include garbage or toxic materials and must be stable, non-combustible and not support decay.

('72 Code, § 340:30) (Am. Ord. 1981-372(A), passed 12-14-81) Penalty, see § 10.99

§ 118.08 CONDITIONS OF PERMIT.

The permit must include as a condition thereof a finished grade plan which will not adversely affect the adjacent land, and as a condition thereof must regulate the type of fill permitted, plans for rodent control, fire control and general maintenance of the site and

adjacent area and make provision for control of material dispersed from wind or hauling material to or from the site.

('72 Code, § 340:35)

§ 118.09 PROHIBITED MATERIALS.

The dumping of materials for the purposes of land reclamation must not be a violation of any other ordinance or code provisions of the city, including but not limited to dumping and sanitary landfill, provided that the person engaged in such land reclamation must have first secured a special permit in accordance with the provisions of § 118.07. Any area of the city which has been licensed as a public dump by the city shall not be subject to this section or § 118.07.

('72 Code, § 340:40) (Am. Ord. 1981-355(A), passed 3-23-81; Am. Ord. 1981-372(A), passed 12-14-81)

Penalty, see § 10.99

CHAPTER 119: PAWNBROKERS AND PEDDLERS

Section

Pawnbrokers

Peddlers and Solicitors

Itinerant Produce Merchant

PAWNBROKERS

§ 119.01 PURPOSE.

The City Council finds that pawnbrokers can provide an opportunity for the commission and concealment of crimes, because such businesses have the ability to receive and transfer stolen property easily and quickly. The City Council also finds that consumer protection regulation is warranted with transactions involving pawnbrokers. The purpose of this subchapter is to prevent pawn businesses from being used as facilities for the commission of crimes and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the residents of the city. It is also the purpose of this section to help the Police Department regulate such businesses and to decrease and stabilize costs associated with the regulation of the pawn industry and to assist the Police Department in the identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information.

('72 Code, § 468:00) (Ord. 1997-843, passed 3-24-97)

§ 119.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

BILLABLE TRANSACTION. Every reportable transaction conducted by a pawnbroker except renewals, redemptions, or extensions of existing pawns on items previously reported and continuously in the licensee's possession is a billable transaction.

CHATTEL. A movable article of personal property.

CHOSE IN ACTION. A thing in action and a right of bringing an action or right to recover a debt or money. Right of proceeding in a court of law to procure payment of sum of money, or right to recover a personal chattel or a sum of money by action.

PAWNBROKER. Any person, who, either as a principal, agent, or employee lends money on deposit or pledge of personal property, or other valuable thing, or who deals in the purchasing of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or who lends money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.

PAWNSHOP. The location at which or premises in which a pawnbroker regularly conducts business.

PAWN TRANSACTION. Any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

PLEDGED GOODS. Tangible personal property other than choses in action, securities, bank drafts, or printed evidence of indebtedness, purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.

PERSON. An individual, partnership, corporation, limited liability company, joint venture, trust, association, or any other legal entity, however organized.

REPORTABLE TRANSACTION. Every transaction conducted by a pawnbroker in which merchandise is received through a pawn or in which a pawn is renewed, extended, or redeemed, is reportable except:

(1) The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker maintains a record of that purchase or consignment that describes each item, and must mark each item in a way that relates it to that transaction record.

(2) Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

TRUE COPY. A copy consistent with fact or reality, not false or erroneous. Reliable, accurate, real, and genuine.

('72 Code, § 468:05) (Ord. 1997-843, passed 3-24-97)

§ 119.03 LICENSE REQUIRED.

It is unlawful for a person to conduct, operate or engage in the business of a pawnbroker or otherwise portray the person as a pawnbroker without having first obtained a valid license authorizing engagement in the business. No license may be transferred to a different location or a different person. In the case of the death of a licensee, the personal representative of the licensee may continue operation of the business for not more than 90 days after the licensee's death. Issuance of a license under this section will not relieve the licensee from obtaining any other licenses required to conduct business at the same or any other locations.

('72 Code, § 468:10) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.04 LICENSE FEES.

(A) The annual license fees for a license will be as set forth in the Appendix to this code. If the application is made during the license year, a license may be issued for the remainder of the license year for a monthly pro rata fee. An unexpired fraction of a month will be counted as a complete month.

(B) The billable transaction license fee will be as set forth in the Appendix.

(C) Billable transaction fees will be billed monthly and are due and payable within 30 days. Failure to do so is a violation of this subchapter.

('72 Code, § 468:15) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.05 INVESTIGATION FEES.

An applicant for a new license under this section, or for the renewal of an existing license that is more than six months past due, will pay an investigation fee as set forth in the Appendix to this code at the time an original application is submitted. This investigation fee will not be subject to refund or proration. If the expenses of the investigation relating to any application exceed the minimum investigation fee, the city will notify the applicant(s) of this fact and will require the applicant(s) to pay an additional investigation fee that the city deems necessary to complete the city's investigation of the applicant(s). The applicant(s) will pay such an additional investigation fee within five days of being so notified. If such additional investigation fee is not paid within the five day period, the city will cease consideration of the application. Nonpayment of any additional investigation fees required will be grounds for denial of the application.

('72 Code, § 468:20) (Ord. 1997-843, passed 3-24-97)

§ 119.06 EXPIRATION OF LICENSE.

The license is issued for a period of one year beginning on January 1 except that if the application is made during the license year a license may be issued for the remainder of the license year for a monthly pro rata fee. An unexpired fraction of a month will be counted as a complete month. All licenses will expire on December 31.

('72 Code, § 468:25) (Ord. 1997-843, passed 3-24-97)

§ 119.07 APPLICATION REQUIRED.

(A) *Required information*. An application form provided by the License Division must be completed by every applicant for a new license or for a renewal of an existing license. Every new applicant must provide all the following information:

(1) If the applicant is an individual:

(a) The full legal name, place of birth, date of birth, street resident address, home telephone number, and work telephone number of the applicant.

(b) Whether the applicant is a citizen of the United States or resident alien.

(c) Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.

(d) The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by M.S. § 333.01.

(e) The street address at which the applicant has lived during the preceding five years.

(f) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding five years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five years.

(g) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.

(h) The physical description of the applicant.

(i) The applicant's current personal financial statement and true copies of the applicant's federal and state tax returns for the two years prior to application.

(j) If the applicant does not manage the business, the full legal name of the manager(s) or other person(s) in charge of the business, as well as, the following information:

1. Place of birth, date of birth, street resident address, home telephone number, and work telephone number of the manager(s) or other person(s) in charge of the business.

2. Whether the manager(s) or other person(s) in charge of the business is a citizen of the United States or resident alien.

3. Whether the manager(s) or other person(s) in charge of the business has ever used or has been known by a name other than the name(s) listed as manager(s) or other person(s) in charge of the business. If so, the name or names used and information concerning dates and places used.

4. The street address at which the manager(s) or other person(s) in charge of the business has lived during the preceding five years.

5. The type, name, and location of every business or occupation in which the manager(s) or other person(s) in charge of the business has been engaged during the preceding five years and the name(s) and address(es) of their employer(s) and partner(s), if any, for the preceding five years.

6. Whether the manager(s) or other person(s) in charge of the business has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, they must furnish information as to the time, place, and offense of all such convictions.

7. The physical description(s) of the manager(s) or other person(s) in charge of the business.

(2) If the applicant is a partnership:

(a) The full legal name(s), address(es), place of birth(s), home telephone number(s), and work telephone number(s) of all general or limited partners.

(b) Whether all the general or limited partners are citizens of the United States or resident aliens.

(c) Whether the general or limited partners have ever used or have been known by a name other than the names listed as general or limited partners, and if so, the name or names used and information concerning dates and places used.

(d) The name(s) of the managing partner(s) and the interest of each partner in the licensed business.

(e) The street address at which the general or limited partners have lived during the preceding five years.

(f) The type, name, and location of every business or occupation in which the general or limited partners have been engaged during the preceding five years and the name(s) and address(es) of the general or limited partner's employer(s) and partner(s), if any, for the preceding five years.

(g) A true copy of the partnership agreement will be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, a certified copy of such certificate must be attached to the application.

(h) A true copy of the federal and state tax returns for partnership for the two years prior to application.

(i) Whether any general or limited partner has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the partner(s) must furnish information as to the time, place, and offense of all such convictions.

(j) If the partnership does not manage the business, the full legal name of the manager(s) or other person(s) in charge of the business, as well as, the following information:

1. Place of birth, date of birth, street resident address, home telephone number, and work telephone number of the manager(s) or other person(s) in charge of the business.

2. Whether the manager(s) or other person(s) in charge of the business is a citizen of the United States or resident alien.

3. Whether the manager(s) or other person(s) in charge of the business has ever used or has been known by a name other than the name(s) listed as manager(s) or other person(s) in charge of the business. If so, the name or names used and information concerning dates and places used.

4. The street address at which the manager(s) or other person(s) in charge of the business has lived during the preceding five years.

5. The type, name, and location of every business or occupation in which the manager(s) or other person(s) in charge of the business has been engaged during the preceding five years and the name(s) and address(es) of their employer(s) and partner(s), if any, for the preceding five years.

6. Whether the manager(s) or other person(s) in charge of the business has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, they must furnish information as to the time, place, and offense of all such convictions.

7. The physical description(s) of the manager(s) or other person(s) in charge of the business.

(3) If the applicant is a corporation or other organization:

(a) The name of the corporation or business form, and if incorporated, the state of incorporation.

(b) A true copy of the certificate of incorporation, articles of incorporation or association agreement, and bylaws will be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, must be attached.

(c) The full legal name of the manager(s), proprietor(s), or agent(s), as well as, the following information concerning each manager, proprietor, or agent:

1. Place of birth, date of birth, street resident address, home telephone number, and work telephone number of the manager(s), proprietor(s) or agent(s).

2. Whether the manager(s), proprietor(s), or agent(s) is a citizen of the United States or resident alien.

3. Whether the manager(s), proprietor(s) or agent(s) has ever used or has been known by a name other than the name(s) listed as manager(s), proprietor(s), or agent(s). If so, the name or names used and information concerning dates and places used.

4. The street address at which the manager(s), proprietor(s), or agent(s) has lived during the preceding five years.

5. The type, name, and location of every business or occupation in which the manager(s), proprietor(s), or agent(s) has been engaged during the preceding five years and the name(s) and address(es) of their employer(s) and partner(s), if any, for the preceding five years.

6. Whether the manager(s), proprietor(s) or agent(s) has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, furnish information as to the time, place, and offense of all such convictions.

7. The physical description of the manager(s), proprietor(s), or agent(s).

8. A list of all persons who control or own an interest in excess of five percent in such organization or business form or who are officers of the corporation or business form and the following information for each said persons:

a. Place of birth, date of birth, street resident address, home telephone number, and work telephone number.

b. Whether all said persons are a citizens of the United States or resident aliens.

c. Whether all said persons have ever used or have been known by a name other than the name(s) listed. If so, the name or names used and information concerning dates and places used.

d. The street address at which all said persons have lived during the preceding five years.

e. The type, name, and location of every business or occupation in which all said persons have been engaged during the preceding five years and the name(s) and address(es) of employer(s) and partner(s), if any, for the preceding five years.

f. Whether all said persons have ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, furnish information as to the time, place, and offense of all such convictions.

g. The physical description of all said persons.

h. This subdivision, however, will not apply to a corporation whose stock is publicly traded on a stock exchange and is applying for a license to be owned and operated by it.

(4) For all applicants:

(a) Whether the applicant holds a current pawnbroker, precious metal dealer or secondhand goods dealer license from any

other governmental unit.

(b) Whether the applicant has previously been denied, or had revoked or suspended, a pawnbroker, precious metal dealer, or secondhand dealers license from any other governmental unit.

(c) The location of the business premises.

(d) If the applicant does not own the business premises, a true and complete copy of the executed lease.

(e) The legal description of the premises to be licensed.

(f) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.

(g) The approved conditional use permit (CUP).

(h) Such other information as the City Council or issuing authority may require.

(B) *New manager*. When a licensee places a manager(s), proprietor(s), or agent(s), or if the named manager(s), proprietor(s), or agent(s) of a licensed business changes, the licensee must complete and submit the appropriate information, on forms provided by the City Manager or designated official, within 14 days and will pay the investigation fee as set forth in the Appendix to this code. The application must include:

(1) The full legal name, place of birth, date of birth, street resident address, home telephone number, and work telephone number of the manager(s), proprietor(s) or agent(s).

(2) Whether the manager(s), proprietor(s), or agent(s) is a citizen of the United States or resident alien.

(3) Whether the manager(s), proprietor(s) or agent(s) has ever used or has been known by a name other than the name(s) listed as manager(s), proprietor(s), or agent(s). If so, the name or names used and information concerning dates and places used.

(4) The street address at which the manager(s), proprietor(s), or agent(s) has lived during the preceding five years.

(5) The type, name, and location of every business or occupation in which the manager(s), proprietor(s), or agent(s) has been engaged during the preceding five years and the name(s) and address(es) of their employer(s) and partner(s), if any, for the preceding five years.

(6) Whether the manager(s), proprietor(s) or agent(s) has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, furnish information as to the time, place, and offense of all such convictions.

(7) The physical description of the manager(s), proprietor(s), or agent(s).

(C) *Investigation*. The investigation fee will not be subject to refund or proration. If the expenses of the investigation relating to any application exceed the investigation fee, the city will notify the applicant(s) of this fact and will require the applicant(s) to pay an additional investigation fee which the city deems necessary to complete the city's investigation of the applicant(s). The applicant(s) will pay such an additional investigation fee within five days of being so notified. If such additional investigation fee is not paid within the five day period, the city will discontinue consideration of the application. Nonpayment of any additional investigation fees required will be grounds for denial of application.

(D) *Application execution*. All applications for a license under this section must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a person, it must be signed and sworn to by such person; if that of a corporation, by an officer thereof; if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof.

(E) *Investigation*. The city, prior to the granting of an initial license, must conduct a preliminary background and financial investigation of the applicant. The Police Department and Finance Division must investigate into the truthfulness of the statements set forth in the application and will verify the findings thereon. The applicant must furnish to the Police Department and Finance Division such evidence as the Police Department and Finance Division may reasonably require in support of the statements set forth in the application.

(F) *Public hearing*. A license will not be issued or renewed without a public hearing. Any person having an interest in or who will be affected by the proposed license will be permitted to testify at the hearing. The public hearing must be preceded by at least ten days published notice specifying the location of the proposed licensed business premises.

(G) *Granting of license.* After review of the license application, investigation report, and a public hearing, the City Council may grant or refuse the application for a new or renewed pawnbroker license. A license will not be effective unless the application fee and bond have been filed with the License Division.

(H) *Persons ineligible for a license.* No licenses under this ordinance will be issued to an applicant who is a natural person, a partnership if such applicant has any general partner or managing partner, a corporation or other organization if such applicant has any manager, proprietor or agent in charge of the business to be licensed, if the applicant:

(1) Is a minor at the time that the application is filed;

(2) Has been convicted of any crime directly related to the occupation licensed as prescribed by M.S. § 364.03, Subd. 2, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by M.S. § 364.03, Subd. 3;

(3) Is not of good moral character or repute; or

(4) Has had a pawnbroker license revoked within five years of the license application date.

('72 Code, § 468:30) (Ord. 1997-843, passed 3-24-97; Am. Ord. 2004-1013, passed 5-10-04)

§ 119.08 BOND.

Before a license will be issued, every applicant must submit a bond with corporate surety, cash, or a United States government bond in an amount of $5,000. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers, and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business as a pawnbroker, or in lieu thereof, will pay the reasonable value in money to the person. The bond will contain a provision that no bond may be canceled except upon 30 days written notice to the city, which will be served upon the City Manager or designated official. The bond must provide that it is forfeited to the city upon a violation of law or ordinance.

('72 Code, § 468:35) (Ord. 1997-843, passed 3-24-97)

§ 119.09 RECORDS REQUIRED.

At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record the following in a computerized record approved by the Police Department:

(A) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such an item.

(B) The purchase price, amount of money lent upon, or pledged therefor.

(C) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

(D) Date, time, and place the item of property was received by the licensee.

(E) Full legal name, residence address, residence telephone number, date of birth, and accurate description of the person from whom the item of the property was received, including: sex, height, weight, race, color of eyes, and color of hair.

(F) The identification number and state of issue from any of the following forms of identification of the seller:

(1) Current valid photo Minnesota drivers' license.

(2) Current valid photo Minnesota identification card.

(3) Current valid photo driver's license issued by another state.

(4) Current valid photo identification card issued by another state.

(G) The signature of the person identified in the transaction.

(H) The licensee must also take a color photograph or color video recording of:

(1) Each customer involved in a billable transaction.

(2) (a) Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed.

(b) If a photograph is taken, it must be at least two inches in length by two inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the Chief of Police, or the Chief's designee, upon request. The licensee must keep the photograph for six months. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that the person is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises.

(c) If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that the person is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for six months.

(I) Renewals, extensions and redemptions. For renewals, extensions and redemptions, the licensee will provide the original transaction identifier, the date of the current transaction, and the type of transaction.

(J) Inspection of records. The records must at all reasonable times be open to inspection by the Police Department or the License Division. Data entries will be retained for at least three years from the date of transaction.

('72 Code, § 468:40) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.10 DAILY REPORTS TO POLICE.

(A) *Method.* Licensees must provide to the Police Department the information required in § 119.09(A) through (F), in an approved computerized form. The licensee must display a sign of sufficient size, and in a conspicuous place in the premises, so as to inform all patrons that all transactions are reported to the Police Department.

(B) *Billable transaction fees.* Licensees will be charged for billable transactions at the rate set forth in the Appendix to this code.

('72 Code, § 468:45) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.11 RECEIPT REQUIRED.

Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three years. The receipt must include at least the following information:

(A) The name, address, and telephone number of the licensed business.

(B) The date and time the item was received by the licensee.

(C) Whether the item was pawned or sold, or the nature of the transaction.

(D) An accurate description of each item received including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such an item.

(E) The signature or unique identifier of the licensee or employee that conducted the transaction.

(F) The amount advanced or paid.

(G) The monthly and annual interest rates, including all pawn fees and charges.

(H) The last regular day of business by which the item must be redeemed by the pledgor without risk that the item will be sold and the amount necessary to redeem the pawned item on that date.

(I) The full name, residence address, residence telephone number, and date of birth of the pledgor or seller.

(J) The identification number and state of issue from any of the following forms of identification of the pledgor or seller:

(1) Current valid photo Minnesota drivers' license.

(2) Current valid photo Minnesota identification card.

(3) Current valid photo drivers' license issued by another state.

(4) Current valid photo identification card issued by another state.

(K) Description of the pledgor or seller including sex, height, weight, race, color of eyes and color of hair.

(L) The signature of the pledgor or seller.

(M) All printed statements required by M.S. § 325J.04, Subdivision 2, or any other applicable statutes.

('72 Code, § 468:50) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.12 REDEMPTION PERIOD.

Any person pledging, pawning or depositing an item for security must have a minimum of 90 days from the date of that transaction to redeem the item before it may be forfeited and sold. During the 90 day holding period, items may not be removed from the licensed location except as provided in § 119.19. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor, or with approval of the Police Chief or the Chief's designee. Written authorization for release of property to persons other than original pledgor must be maintained along with an original transaction record in accordance with § 119.09(J).

('72 Code, § 468:55) (Ord. 1997-843, passed 3-24-97)

§ 119.13 HOLDING PERIOD.

Any item purchased by a licensee must not be sold or otherwise transferred for 90 days from the date of the transaction. An individual may redeem an item 72 hours after the item was received on deposit, excluding Sundays and legal holidays.

('72 Code, § 468:60) (Ord. 1997-843, passed 3-24-97)

§ 119.14 POLICE ORDER TO HOLD PROPERTY.

(A) *Investigative hold.* Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold will be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to division (B) of this section, whichever comes first.

(B) *Order to hold.* Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold will expire 90 days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

(C) *Order to confiscate.* If an item is identified as stolen or evidence in a criminal case, the Chief of Police or the Chief's designee may:

(1) Physically confiscate and remove it from the shop, pursuant to a written order from the Chief of Police or the Chief's designee; or

(2) (a) Place the item on hold or extend the hold as provided in division (B) of this section, and leave it in the shop.

(b) When an item is confiscated, the person doing so will provide identification upon request of the licensee, and will provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

(c) When an order to hold/confiscate is no longer necessary, the Chief of Police, or Chief's designee will so notify the licensee.

('72 Code, § 468:65) (Ord. 1997-843, passed 3-24-97)

§ 119.15 INSPECTION OF ITEMS.

At all times during the terms of the license, the licensee must allow the Chief of Police or the Chief's designee(s) to enter the premises where the licensed business is located, including all off-site storage facilities as authorized in § 119.19 during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records, therein to verify compliance with this subchapter or other applicable laws.

('72 Code, § 468:70) (Ord. 1997-843, passed 3-24-97)

§ 119.16 LABELS REQUIRED.

Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item, and the description or the model and serial number of the item as reported to the Police Department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels will not be re-used.

('72 Code, § 468:75) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.17 PROHIBITED ACTS.

(A) No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years.

(B) No licensee may receive any goods from a person of unsound mind or an intoxicated person.

(C) No licensee may receive any goods, unless the seller presents identification in the form of a current valid photo Minnesota driver's license, a current valid photo State of Minnesota identification card, or current valid photo drivers' license issued by another state of residency, or current valid photo identification card issued by the state of residency of the person from whom the item was received.

(D) No licensee may receive any item of property that possesses an altered or obliterated serial number or "operation identification" number or any item of property that has had its serial number removed.

(E) No licensee may receive any revolver, pistol, sawed-off shotgun, automatic rifle, blackjack, switchblade knife, or other similar weapons or firearms.

('72 Code, § 468:80) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.18 DENIAL, SUSPENSION, OR REVOCATION.

Any license under this subchapter may be denied, suspended, or revoked for one or more of the following reasons:

(A) The proposed use does not comply with the zoning code.

(B) The proposed use does not comply with any health, building, building maintenance, or other provisions of this code of ordinances or state law.

(C) The applicant or licensee has failed to comply with one or more provisions of this subchapter.

(D) Fraud, misrepresentation, or bribery in securing or renewing a license.

(E) Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.

(F) Violation within the preceding five years, of any law relating to theft, damage, or trespass to property, sale of a controlled substance, or operation of a business.

(G) The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this subchapter.

('72 Code, § 468:85) (Ord. 1997-843, passed 3-24-97; Am. Ord. 2004-1013, passed 5-10-04)

§ 119.19 PAYMENTS BY CHECK.

When a pawnbroker buys or otherwise receives an item at the licensed place of business, payment must be made by a check made payable to a named payee who is the actual intended seller.

('72 Code, § 468:90) (Ord. 1997-843, passed 3-24-97)

§ 119.20 BUSINESS AT ONLY ONE PLACE.

A license under this subchapter authorizes the licensee to carry on its business only at the permanent place of business designated in the license. The licensee will permit inspection of the facility in accordance with § 119.16. All provisions of this subchapter regarding record keeping and reporting apply to the facility and its contents. Property will be stored in compliance with all provisions of the city code. The licensee must either own the building in which the business is conducted or have a lease on the business premises which extends for more than six months.

('72 Code, § 468:95) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

§ 119.21 APPLICABLE LAWS.

A pawnbroker must meet all city, county, state, and federal regulations relating to pawnbrokers and this subchapter shall not be construed or interpreted to supersede or limit any other such applicable ordinance or law.

('72 Code, § 468:100) (Ord. 1997-843, passed 3-24-97) Penalty, see § 10.99

PEDDLERS AND SOLICITORS

§ 119.30 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting. The term peddler shall mean the same as the term hawker.

PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term includes each member, officer, partner, associate, agent or employee.

REGULAR BUSINESS DAY. Any day during which the City Hall is normally open for the purpose of conducting public business. Holidays defined by state law are not counted as regular business days.

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

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days. The term ***TRANSIENT MERCHANT*** does not apply to ***MOBILE FOOD UNIT*** , as defined in §§ 114.03 and 152.008.

(Am. Ord. 2014-1177, passed 7-7-14)

§ 119.31 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms ***PEDDLER, SOLICITOR,*** and ***TRANSIENT MERCHANT*** do not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also do not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on the person's established regular delivery route.

(B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi- person bazaar or flea market, shall be exempt from the definitions of ***PEDDLERS, SOLICITORS,*** and ***TRANSIENT MERCHANTS***, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court- ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

§ 119.32 LICENSING; EXEMPTIONS.

(A) *County license required.* It is unlawful to conduct business as a peddler, solicitor or transient merchant within the city limits without first having obtained the appropriate license from the county as required by M.S. Chapter 329 as amended.

(B) *City license required.* Except as otherwise provided for by this chapter, it is unlawful to conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 119.36.

(C) *Application.* Application for a city license to conduct business as a peddler or transient merchant must be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license must be made on a form approved by the City Council and available from the office of the Licensing Division. All applications must be signed by the applicant. All applications must include the following information:

(1) Applicant's full legal name.

(2) All other names under which the applicant conducts business or to which applicant officially answers.

(3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).

(4) Full address of applicant's permanent residence.

(5) Telephone number of applicant's permanent residence.

(6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.

(7) Full address of applicant's regular place of business (if any).

(8) Any and all business related telephone numbers of the applicant.

(9) The type of business for which the applicant is applying for a license.

(10) Whether the applicant is applying for an annual or daily license.

(11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days the applicant will be conducting business in the city (maximum 14 consecutive days).

(12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.

(13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.

(14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.

(15) Proof of any requested county license.

(16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.

(17) A general description of the items to be sold or services to be provided.

(18) All additional information deemed necessary by the City Council.

(19) The applicant's driver's license number or other acceptable form of identification.

(20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter must be accompanied by the fee established in the city's fee schedule as adopted from time to time by a resolution passed by the City Council.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the Licensing Division within two regular business days of receipt, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If it is determined that the application is incomplete, the Licensing Division must inform the applicant of the required necessary information which is missing. If the application is complete, any investigation, including background checks, necessary to verify the information provided with the application will be ordered. Within ten regular business days of receiving the application the Licensing Division must issue the license, unless there exist grounds for denying the license under § 1304, in which case the Licensing Division must deny the license. If the Licensing Division denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving the notice of rejection, a public hearing before the City Council to be heard within 20 days of the date of the request. The final decision of the City Council following the public hearing is appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

(F) *Duration.* An annual license granted under this chapter is valid for one calendar year from the date of issue. All other licenses granted under this chapter are valid only during the time period indicated on the license.

(G) *License exemptions.*

(1) No license is required for any person to sell the products of the farm or garden occupied and cultivated by that person.

(2) No license is required of any person going from house-to-house, door-to-door, business-to-business, street-to- street, or other type of place-to-place when such activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.

(3) Professional fundraisers working on behalf of an otherwise exempt person or group are exempt from the licensing requirements of this chapter.

Penalty, see § 10.99

§ 119.33 LICENSE INELIGIBILITY.

The following are grounds for denying a license under this chapter:

(A) The failure of the applicant to obtain and show proof of having obtained any required county license.

(B) The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.

(C) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state

statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner or that will not adversely affect the health, safety and welfare of the residents of the city. Such violations include but are not limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

(D) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.

(E) The applicant is determined to have a bad business reputation. Evidence of a bad business reputation includes, but is not limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three such complaints filed against the applicant within the preceding five years.

§ 119.34 SUSPENSION AND REVOCATION.

(A) *Generally*. Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

(1) Fraud, misrepresentation or incorrect statements on the application form.

(2) Fraud, misrepresentation or false statements made during the course of the licensed activity.

(3) Conviction of any offense for which granting of a license could have been denied under § 119.33.

(4) Violation of any provision of this chapter.

(B) *Multiple persons under one license*. The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee serves as a suspension or revocation of each such authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(C) *Notice*. Prior to revoking or suspending any license issued under this chapter, the city must provide the license holder with written notice of the alleged violations and inform the licensee of the licensee's right to a hearing on the alleged violation. Notice must be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) *Public hearing*. Upon receiving the notice provided in division (C) of this section, the licensee has the right to request a public hearing. If no request for a hearing is received by the City Clerk within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service is considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing must be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council must notify the licensee of its decision.

(E) *Emergency*. If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) of this section.

(F) *Appeals*. Any person whose license is suspended or revoked under this section has the right to appeal that decision in court.

Penalty, see § 10.99

§ 119.35 TRANSFERABILITY.

A license issued under this chapter must not be transferred to any person other than the person to whom the license was issued.

Penalty, see § 10.99

§ 119.36 REGISTRATION.

A solicitor, and any person exempt from the licensing requirements of this chapter under § 119.32, is required to register with the city. Registration must be made on the same form required for a license application, but no fee is required. Immediately upon completion of the registration form, the Licensing Division shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration are non-transferable.

Penalty, see § 10.99

§ 119.37 PROHIBITED ACTIVITIES.

It is unlawful for a peddler, solicitor or transient merchant to conduct business in any of the following manners:

(A) Calling attention to the person's business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.

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

(C) Conducting business in such a way as to create a threat to the health, safety and welfare of any individual or the general public.

(D) Conducting business before 7:00 a.m. or after 9:00 p.m.

(E) Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. It is unlawful for a peddler, solicitor or transient merchant to claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.

(G) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

Penalty, see § 10.99

§ 119.38 EXCLUSION BY PLACARD.

It is unlawful for a peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, to enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. It is unlawful for a person other than the property owner or tenant to remove, deface or otherwise tamper with any sign or placard under this section.

Penalty, see § 10.99

ITINERANT PRODUCE MERCHANT

§ 119.40 DEFINITIONS.

PERSON. Includes the singular and the plural and also means and includes any person, firm or corporation, association, club, co-partnership or society, or any other organization.

ITINERANT PRODUCE MERCHANT. Any person who has lawfully applied for a permit to sell produce in compliance with the provisions, restrictions, and location(s) specified in the zoning ordinance.

ITINERANT PRODUCE SALES. Any temporary sale of produce on property specifically designated for that purpose.

PRODUCE. Fresh flowers, fruits, and vegetables.

(Ord. 2000-934, passed 11-13-00)

§ 119.41 PERMIT REQUIRED.

It is unlawful for any person to engage in the business of itinerant produce sales and to sell or offer for sale any produce without first obtaining a permit and license as provided herein. It is unlawful to sell or offer for sale any produce anywhere within the city without a permit.

(Ord. 2000-934, passed 11-13-00)

§ 119.42 TIME PERIOD.

Itinerant produce sales may only occur during the time period beginning April 1 and ending October 31 of each year.

(Ord. 2000-934, passed 11-13-00)

§ 119.43 LOCATION.

Itinerant produce sales may exist only in those locations specified in the Zoning Ordinance.

(Ord. 2000-934, passed 11-13-00)

§ 119.44 TIME OF DAY.

Itinerant produce sales may be permitted only during the following hours:

(A) Monday through Friday. 12 p.m. (noon) to 5 p.m.

(B) Saturday. 8 a.m. to 1 p.m.

(C) Sunday. 11 a.m. to 3 p.m.

(Ord. 2000-934, passed 11-13-00)

§ 119.45 ITINERANT PRODUCE MERCHANT LIMIT.

Itinerant produce merchants licenses are limited to ten merchants at any one time period.

(Ord. 2000-934, passed 11-13-00)

§ 119.46 APPLICATION.

Applicants for a permit under this subchapter must file with the Licensing Division a sworn application in writing, in duplicate, on a form to be furnished by the Licensing Division, which gives the following information:

(A) Full legal name and date of birth of the applicant.

(B) Address (legal and local).

(C) A brief description of the nature of the produce to be sold.

(D) The specific length of time and the dates for which the right to do business is desired.

(E) If a vehicle is to be used, a description of the same, together with license number or other means of identification.

(F) The Licensing Division may refer the application to the Community Development and Recreation and Parks Departments for comment and recommendation.

(Ord. 2000-934, passed 11-13-00)

§ 119.47 TRANSFER.

No permit issued under the provisions of this subchapter may be used or exhibited at any time by any person other than the one to whom it was issued.

(Ord. 2000-934, passed 11-13-00)

§ 119.48 NUISANCE.

No itinerant produce merchant may conduct business so as to annoy any other person or to become a nuisance or so as to obstruct travel upon any street, highway or public place in the city. All merchants must be responsible for removing all associated litter, trash and the like from the site each and every day.

(Ord. 2000-934, passed 11-13-00)

§ 119.49 LOUD NOISES AND SPEAKING DEVICES.

No itinerant produce merchant nor any person on their behalf may shout, make any cry out, blow a horn, ring a bell or use any sound device, include any loud speaking radio or sound amplifying system to be plainly heard upon any streets, avenues, adjacent property, or for the purpose of attracting attention to any produce for sale.

(Ord. 2000-934, passed 11-13-00)

§ 119.50 SIGNS.

The itinerant produce merchant signs must be in compliance with the sign ordinance (Chapter 150).

(Ord. 2000-934, passed 11-13-00)

§ 119.51 DUTY OF COMMUNITY DEVELOPMENT AND POLICE DEPARTMENTS TO ENFORCE.

It is the duty of the Community Development department and/or any police officer of this municipality to require any person seen selling, who is not known by such employee to have received a permit, to produce their permit and to enforce the provisions of this subchapter against any person found to be violating the same.

(Ord. 2000-934, passed 11-13-00)

§ 119.52 REVOCATION OF PERMIT.

(A) Permits issued under the provisions of this subchapter may be revoked by the city after notice for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for permit or made to the course of carrying out the business as a merchant;

(2) Any violation of City Code;

(3) Conducting the business in an unlawful manner or in such a manner as to constitute a nuisance, breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(B) Notice of the revocation of a permit may be given in writing, setting forth specifically the grounds of complaint.

(Ord. 2000-934, passed 11-13-00)

CHAPTER 120: SAUNAS

Section

§ 120.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

MASSAGE. The rubbing, stroking, kneading, tapping, or rolling of the body with the hands, for the exclusive purposes of relaxation, physical fitness, or beautification, and for no other purposes.

MASSEUR. A male person who practices massage.

MASSEUSE. A female person who practices massage.

SAUNA. Any commercial establishment in which is located a steam or heat bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent.

('72 Code, § 485:00)

§ 120.02 MASSAGE DISTINGUISHED.

The practice of massage is declared to be distinct from the practice of medicine surgery, osteopathy, chiropractic, physical therapy, or podiatry, and persons duly licensed or registered in this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, nurses who work solely under the direction of any such persons, athletic directors, and trainers are expressly excluded from the provisions of this chapter. Beauty culturists and barbers who do not give, or hold themselves out to give, massage treatments, as defined herein, other than is customarily given in such shops or places of business, for the purpose of beautification only, are exempt from the provisions of this chapter.

('72 Code, § 485:00)

§ 120.03 LICENSE REQUIRED.

(A) It is unlawful to engage in the business of operating a sauna either exclusively or in connection with any other business enterprise which offers massage as part of its service without being licensed as provided in this section.

(B) Application for a license must be made in writing, filed with the City Clerk on the form prescribed by the Licensing Division and verified by the applicant or if the applicant is a corporation by one of its officers having knowledge of the facts. At the time of filing an application the applicant must pay the license fee and investigation fee of $500.

(C) License fees are in the amount set by the Council from time to time. A separate license will be obtained for each place of business. The licensee must display the license in a prominent place on the licensed premises at all times. The license, unless revoked, canceled or suspended, is for the calendar year or part thereof for which it has been issued. The license is not transferable and should ownership change during the license year, the new owner must immediately apply for a new license and pay the license fee and a new investigation fee as set forth in division (B) of this section.

(D) If the applicant is a partnership or corporation, the applicant must designate a person as the manager and responsible and in charge of the business. The person must remain responsible for the proper conduct of the business until another suitable person has been designated in writing by the applicant and approved by the City Manager.

('72 Code, § 485:05) Penalty, see § 10.99

§ 120.04 GRANTING OR DENIAL OF LICENSES.

License applications must be reviewed by the Police Department, Planning Department, Health Department and such other department as the City Manager shall deem necessary. The investigation reports must be submitted to the City Council who will grant or deny the license applications subject to the provisions of this section. Renewal licenses must be approved by the City Council.

('72 Code, § 485:10)

§ 120.05 REVOCATION OR SUSPENSION OF LICENSE.

(A) The City Manager is hereby empowered to revoke or suspend any sauna license issued pursuant to this section. The licensee may appeal to the City Council from the Manager's decision. The following are grounds for revocation or suspension of the sauna license:

(1) Violation by the licensee or any of the licensee's employees of any of the provisions of this section.

(2) The sale or consumption, on the premises, by employees or customers of alcoholic beverages or narcotic drugs.

(3) Any conduct or activity contrary to the public health, safety, morals or welfare.

(B) If any license is revoked pursuant to this section, the licensee is not entitled to make application for a new license for a period of five years commencing with the date of revocation by the City Manager.

('72 Code, § 485:15)

§ 120.06 RESTRICTIONS AND REGULATIONS.

(A) Licenses may be granted only for lands in the B-3 General Business District as set forth in the zoning ordinance.

(B) Licenses are granted only to establishments which can meet the safety and sanitary requirements of this chapter.

(C) It is grounds for denial of a license application that the applicant or persons in the applicant's employ are not complying with or have a history of noncompliance with any state or municipal regulations relating to health, safety or morals.

(D) A license is not to be granted to a person of bad repute or to a partnership or to a corporation who has in its employ or is owned by any persons of bad repute.

(E) Saunas will not be opened for business nor will patrons be permitted on the premises between the hours of 12:01 a.m. and 8:00 a.m. of the same day.

(F) It is unlawful for an employee of the sauna to agree to perform or perform any of the activities ordinarily incident to the enterprise at any place other than the licensed premises.

(G) It is unlawful for a person under the age of 18 years to be employed in a sauna requiring a license under the provisions of this chapter.

(H) Upon demand by any police officer, any person engaged in providing services in any licensed premises must provide identification, giving the person's true legal name and correct address.

('72 Code, § 485:20) Penalty, see § 10.99

§ 120.07 CONSTRUCTION AND MAINTENANCE REQUIREMENTS.

(A) All sauna rooms and all restrooms and bathrooms used in connection therewith must be constructed of materials which are impervious to moisture, bacteria, mold or fungus growth. The floor to wall and wall to wall joints must be constructed to provide a sanitary cove with a minimum radius of one inch.

(B) All restrooms used in connection with saunas must be provided with mechanical ventilation of two CFM per square foot of floor area, a minimum of 30 foot candles of illumination, a hand washing sink, equipped with hot and cold running water under pressure, sanitary towels and a soap dispenser.

(C) Each sauna establishment must have a janitor's closet which must provide for the storage of cleaning supplies. The closets must have mechanical ventilation with two CFM per square foot of floor area and a minimum of 30 foot candles of illumination. The closet must include a mop sink.

(D) Walls, floors and equipment in sauna rooms and in restrooms and in bathrooms used in connection therewith must be kept in a state of good repair and clean at all times. Linens and other materials must be stored at least 12 inches off the floor. Clean towels and wash cloths must be made available for each customer.

(E) Individual lockers must be made available for use by patrons. The lockers must have separate keys for locking.

(F) The establishments must provide adequate refuse receptacles which must be emptied as required.

(G) In addition to the requirements contained in this section the licensed premise must conform in all ways to all of the applicable rules, regulations and codes of the city.

('72 Code, § 485:25) Penalty, see § 10.99

CHAPTER 121: TAXICABS

Section

§ 121.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

CALL BOX STAND. A place alongside a street, or elsewhere, where the Council has authorized a holder of a certificate of public convenience and necessity to install a telephone or call box for the taking of calls and the dispatching of taxicabs.

CERTIFICATE. A certificate of public convenience and necessity issued by the Council authorizing the holder thereof to conduct a taxicab business in the city.

OPERATOR. Any person owning or having control of the use of one or more taxicabs used for hire upon the streets or engaged in the business of operating a taxicab within the city.

PERSON. One or more persons of either sex, natural persons, corporations, partnerships and associations.

PRIVATE AUTO LIVERY. An automobile used to carry persons for hire other than by solicitation of business by cruising about the streets.

STREET. Any street, alley, avenue, court, bridge, lane or public place in the city.

TAXICAB. Any motor vehicle engaged in the carrying of persons for hire, whether over a fixed route or not, and whether the same is operated from a street stand or subject to calls from a garage or otherwise operated for hire except private auto liveries as herein defined, but the term does not include vehicles subject to control and regulation by the Public Service Commission or vehicles regularly used by undertakers in carrying on their business.

TAXICAB DRIVER. Any person who drives a taxicab, whether the person is the owner of the taxicab or is employed by a taxicab owner or operator.

TAXICAB STAND. Any place along the curb or street or elsewhere which is exclusively reserved by the city for the use of taxicabs.

TAXIMETER. Any mechanical instrument or device by which the charge for hire of a taxicab is mechanically calculated, whether by distance traveled or waiting time or both, and upon which such charge is indicated by figures.

('72 Code, § 475:00)

§ 121.02 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

It is unlawful for a person to operate or permit a taxicab owned or controlled by that person to be operated as a vehicle for hire upon the streets of the city without having first obtained a certificate of public convenience and necessity from the Council, provided, that any taxicab licensed to operate in any other municipality of this state may carry passengers from that municipality where so licensed to any place or point within the city and may receive local passengers for carriage to the licensing municipality without procuring a license under this section, provided, however, such foreign taxicab driver does not solicit business on the streets of the city nor pick up passengers in the city, except where a trip for such passenger had been arranged at a central office of the company for whom the driver does business, which office is located outside the boundaries of the city. While in the city, the foreign driver must observe all the regulations and conditions of this chapter.

('72 Code, § 475:05) Penalty, see § 10.99

§ 121.03 APPLICATION FOR CERTIFICATE.

An application for a certificate must be filed with the Licensing Division upon forms provided by the city and the application shall be verified under oath and shall furnish the following information:

(A) The name and address of the applicant.

(B) The financial status of the applicants including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to the judgments.

(C) The experience of the applicant in the transportation of passengers.

(D) Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate.

(E) The number of vehicles to be operated or controlled by the applicant and the location of proposed open stands and call box stands.

(F) The color scheme or insignia to be used to designate the vehicle or vehicles of the applicant.

(G) Such further information as the Council may from time to time require.

(H) Must provide a statement covering each vehicle to be so licensed, giving the full name and address of the owner; the class and passenger-carrying capacity of each vehicle for which a license is desired; the length of time the vehicle has been in use; the make of car; the engine number; the serial number and the state license number; whether the same is mortgaged, the name of the mortgagee and the amount of said mortgage; also the holder of legal title to said motor vehicle if other than the applicant; or whether said vehicle is leased, licensed, or under any form of contract permitted to be used and operated by some other person than the one holding legal title thereto, and what person, firm, or corporation collects the revenues from the operation of the taxicab and pays the expenses of operating the same.

('72 Code, § 475:10)

§ 121.04 ISSUANCE OF CERTIFICATE.

(A) If the Council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing and able to perform such public transportation and to conform to the provisions of this ordinance and the rules promulgated by the Council, the Council will issue a certificate stating the name and address of the applicant, the number of vehicles authorized under said certificate and the date of issuance; otherwise, the application will be denied.

(B) In making the above finding as the Council must take into consideration the number of taxicabs already in operation, whether existing transportation is adequate to meet the public need, the probable effect of increased service on local traffic conditions, and the character, experience and responsibility of the applicant.

('72 Code, § 475:15)

§ 121.05 INDEMNITY BOND OR LIABILITY INSURANCE REQUIRED.

No certificate of public convenience and necessity will be issued or continued in operation unless there is in full force and effect a liability insurance policy issued by an insurance company authorized to do business in the State of Minnesota for each vehicle authorized, in the amount of $50,000 for bodily injury to any one person, in the amount of $100,000 for injuries to more than one person which are sustained in the same accident and $25,000 for property damage resulting from any one accident. The policy or certificate of the insurer showing issuance of the policy must be filed in the office of the City Clerk.

('72 Code, § 475:20)

§ 121.06 LICENSE FEES FOR CERTIFICATE HOLDERS.

No certificate will be issued or continued in operation unless the holder thereof has paid a license fee for the right to engage in the taxicab business for each vehicle operated under a certificate of public convenience and necessity. The license fees are for the calendar year and are in addition to any other license fees or other charges established by proper authority and applicable to the holder of the vehicle or vehicles under the license holder's operation and control.

('72 Code, § 475:25)

Cross-reference:

License fees, see Appendix

§ 121.07 TRANSFER OF CERTIFICATES.

No certificate or public convenience and necessity may be sold, assigned, mortgaged, or otherwise transferred without the consent of the Council.

('72 Code, § 475:30) Penalty, see § 10.99

§ 121.08 SUSPENSION AND REVOCATION OF CERTIFICATES.

(A) A certificate issued under the provisions of this chapter may be revoked or suspended by the Council if the holder thereof has:

(1) Violated any of the provisions of this chapter.

(2) Discontinued operations for more than 60 days.

(3) Violated any ordinances of the City of Brooklyn Park, or the laws of the United States or the State of Minnesota, the violations of which reflect unfavorably on the fitness of the holder to offer public transportation.

(B) Prior to suspension or revocation, the holder must be given notice of the proposed action to be taken and must have an opportunity to be heard by the Council.

('72 Code, § 475:35)

§ 121.09 LICENSING OF TAXICAB DRIVERS.

Prior to the commencement of operation under this chapter, the holder of a certificate must furnish to the city the names of all persons who will be operating taxicabs for the certificate holder. Each of such persons must be the holder of a valid chauffeur's license issued by the State of Minnesota. The Police Department must conduct an investigation of each such person and a report of such investigation must be furnished to the Council, together with the recommendation of the Chief of Police as to whether or not such persons should be permitted to operate taxicabs within the city. Upon a finding by the Council that such persons are to be permitted to operate taxicabs within the city, the Licensing Division must issue a taxicab driver's license to such persons upon the payment by them of the required license fee. The license is valid for the calendar year in which issued and must be renewed at the commencement of each subsequent calendar year. It is unlawful for any person to operate a taxicab within the City of Brooklyn Park for or on behalf of any certificate holder without having a valid taxicab driver's license in the person's possession.

('72 Code, § 475:40) Penalty, see § 10.99

§ 121.10 VEHICLES; EQUIPMENT AND MAINTENANCE.

(A) The Council will cause the Chief of the Police Department or name other employee, on behalf of the city, to thoroughly and carefully examine each taxicab before a license is granted to operate the same.

(B) No taxicab will be licensed which does not comply with the following:

(1) It must be in a thoroughly safe condition for the transportation of passengers.

(2) It must be clean and of good appearance and well painted or varnished.

(3) Such other examinations and tests of licensed taxicabs as may be ordered by the Council from time to time as it may deem advisable.

('72 Code, § 475:45) Penalty, see § 10.99

§ 121.11 DESIGNATION OF TAXICABS.

Each taxicab must bear on the outside of each rear door, in painted letters not less than four inches nor more that eight inches in height, the name of the owner and, in addition, may bear an identifying design approved by the Council. No vehicle covered by the terms of this chapter will be licensed whose color scheme, identifying design, monogram, or insignia to be used thereon, in the opinion of the Council, conflicts with or imitates any color scheme, identifying design, monogram or insignia used on a vehicle or vehicles

already operating under the ordinance, in such a manner as to be misleading or tend to deceive or defraud the public and provided further, that if, after a license has been issued for a taxicab hereunder, the color scheme; identifying design, monogram or insignia thereof is changed so as to be in the opinion of the Council, in conflict with or imitate any color scheme, identifying design, monogram, or insignia used by any other person, owner or operator, in such a manner as to be misleading or tend to deceive the public, the license of or certificate covering such taxicab or taxicabs will be suspended or revoked.

('72 Code, § 475:50) Penalty, see § 10.99

§ 121.12 TAXIMETER REQUIRED.

All taxicabs operated under the authority of this chapter must be equipped with taximeters fastened in front of the passengers, visible to them at all times day and night; and after sundown, the face of the taximeter must be illuminated. The taximeter must be operated mechanically by a mechanism of standard design and construction, driven either from the transmission or from one of the front wheels by a flexible and permanently attached driving mechanism. They must be sealed at all points and connections which, if manipulated would affect their correct reading and recording. Each taximeter must have thereon a flag to denote when the vehicle is employed and when it is not employed, and it is the duty of the driver to throw the flag of such taximeter into a non-recording position at the termination of each trip. The taximeters are subject to inspection from time to time by the Police Department. Any inspector or other officer of the Department is authorized, either on complaint of any person or without such complaint, to inspect any meter and, upon discovery of any inaccuracy therein, to notify the person operating the taxicab to cease operation. The taxicab must then be kept off the highways until the taximeter is repaired and in the required working condition.

('72 Code, § 475:55) Penalty, see § 10.99

§ 121.13 RATES OF FARE.

Every taxicab operated under this chapter must have a rate card setting forth the authorized rates of fare displayed in such a place as to be in view of all passengers, rates charged may not exceed taxicab rates which are lawful in the City of Minneapolis.

('72 Code, § 475:60) Penalty, see § 10.99

§ 121.14 REFUSAL OF PASSENGER TO PAY LEGAL FARE.

It is unlawful for any person to refuse to pay the legal fare of any of the vehicles mentioned in this chapter after having hired the same, and it is unlawful for any person to hire any vehicle herein defined with intent to defraud the person from whom it is hired of the value of such service.

('72 Code, § 475:65) Penalty, see § 10.99

§ 121.15 OPEN STANDS.

(A) The Council is authorized and empowered to establish open stands in such place or places upon the streets as it deems necessary for the use of taxicabs operated in the city. The Council must not create an open stand without taking into consideration the need for such stands by the companies and the convenience of the general public. The Council must prescribe the number of cabs that may occupy such open stands. The Council must not create an open stand in front of any place of business where the abutting property owners object to the same or where such stand would tend to create a traffic hazard.

(B) Open stands may be used by the different drivers on a first come first served basis. The driver must pull onto the open stand from the rear and must advance forward as the cabs ahead pull off. Drivers must stay within five feet of their cabs; they must not solicit passengers or engage in loud or boisterous talk while at an open stand. Nothing in this chapter is to be construed as preventing a passenger from boarding the cab of the passenger's choice that is parked at open stands.

('72 Code, § 475:70) Penalty, see § 10.99

§ 121.16 CALL BOX STANDS.

(A) The Council is authorized and empowered to establish call box stands upon the streets of the city in such places as in its discretion it deems proper. A holder desiring to establish a call box stand must make written application to the Council. The applicant must attach to the application the written approval of the abutting property owners of the space, consenting to the creation of such stand. Upon filing of the application, the Police Department must thereafter file their written recommendation to the Council. The Council shall then either grant or refuse the application. When a call box stand has been established an herein provided, it must be used solely by the holder to whom the same was granted and the holder's agents and servants and no other holder will be permitted to use the same.

(B) A holder operating a call box stand as provided for in this chapter is allowed to have on duty at such stand, a starter or other employee for the purpose of assisting in the loading or unloading of passengers from cabs, for receiving calls and dispatching cabs, and for soliciting passengers at such stand. The words "at such stand" mean that part of the sidewalk immediately adjacent to and of equal length with such call box stand.

('72 Code, § 475:75) Penalty, see § 10.99

§ 121.17 PROHIBITIONS OF OTHER VEHICLES.

Private or other vehicles for hire must not at any time occupy the space upon the streets that has been established as either open stands or call box stands.

('72 Code, § 475:80) Penalty, see § 10.99

§ 121.18 SERVICE.

Persons engaged in the taxicab business in the City of Brooklyn Park operating under the provisions of this chapter must render an overall service to the public desiring to use taxicabs. Holders of certificates of public convenience and necessity must maintain a central place of business and keep the same open for such hours of each day as the Council may direct for the purpose of receiving calls and dispatching cabs. They shall answer all calls received by them for services inside the corporate limits as soon as they can do so and if said services cannot be rendered within a reasonable time, they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason therefor. A holder who refuses to accept a call anywhere in the corporate limits of the City of Brooklyn Park at any time when the holder has available cabs, or who fails or refuses to give overall service, is deemed a violator of this chapter.

('72 Code, § 475:85) Penalty, see § 10.99

CHAPTER 122: TOBACCO REGULATIONS

Section

§ 122.01 PURPOSE AND INTENT.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter is intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery devices and to further the official public policy of the State of Minnesota as stated in M.S. § 144.391.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15)

§ 122.02 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery devices are following and complying with the requirements of this chapter. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. ***ELECTRONIC DELIVERY DEVICE*** includes any component part of a product, whether or not marketed or sold separately. ***ELECTRONIC DELIVERY DEVICE*** does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products include but are not limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition are not considered individually packaged.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICE. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purchase.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices are available for sale to the general public. The phrase includes but is not limited to grocery stores, convenience stores and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices in any manner where any person has access to the tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention entails the actual physical exchange of the tobacco, tobacco product, tobacco- related device, electronic delivery devices, or nicotine or lobelia delivery device between the customer and the licensee or employee.

TOBACCO or ***TOBACCO PRODUCTS.*** Any substance or item containing tobacco leaf, including but not limited to cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking. This term excludes any tobacco product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purchase.

TOBACCO-RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15)

§ 122.03 LICENSE.

(A) *License required.* It is unlawful to sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco- related devices, electronic delivery devices, or nicotine or lobelia delivery devices must be made on a form provided by the city. The application must contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name and address of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the Licensing Division must forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the licensing Division determines that an application is incomplete, they will return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license.

(D) *Term.* All licenses issued under this chapter terminate on December 31 of the calendar year in which issued.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 122.99.

(F) *Transfers.* All licenses issued under this chapter are valid only on the premises for which the license was issued and only for the person to whom the license was issued.

(G) *Moveable place of business.* No license will be issued to a moveable place of business.

(H) *Display.* All licenses must be posted and displayed in plain view of the general public on the licensed premise.

(I) *Renewals.* The renewal of a license may be approved by the City Manager or designated official provided that the licensee meets all of the requirements for renewal. If the renewal of a license is denied by the City Manager or designated official, the licensee has the right to appeal that decision to the City Council. The issuance of a license issued under this chapter is considered a privilege and not an absolute right of the applicant and does not entitle the holder to an automatic renewal of the license.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.04 FEES.

No license will be issued under this chapter until the appropriate license fee is paid in full. The fee for a license under this chapter is established in the city's schedule of fees.

(Ord. 1998-873, passed 4-13-98) Penalty, see § 122.99

§ 122.05 BASIS FOR DENIAL OF LICENSE.

The following are grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it must be revoked upon the discovery that the person was ineligible for the license under this section.

(A) The applicant is under the age of 18 years.

(B) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices.

(C) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.

(D) The applicant fails to provide any information required on the application, or provides false or misleading information.

(E) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.

(F) The applicant is applying for a renewal of a license under this section and there have been three or more illegal sales of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices to minors documented at the licensed place of business in the preceding 12 months.

(G) The proposed location of a store that has over 40% of the floor area (not including controlled access storage or office areas) dedicated to tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device display or sale, is within 500 feet of a public or private elementary, junior high (or middle), or senior high school.

(H) The applicant has failed to pay any outstanding administrative penalties.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.06 PROHIBITED SALES.

It is a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device:

(A) If the person does not hold a valid license.

(B) To any person under the age of 18 years.

(C) By means of any type of vending machine.

(D) By means of self-service methods whereby the customer does not need to a make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(E) By means of loosies as defined in § 122.02.

(F) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

(G) If the seller is under the age of 16 years.

(H) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.07 VENDING MACHINES.

It is unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices by the means of a vending machine.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.08 SELF-SERVICE SALES.

(A) It is unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device between the licensee or licensee's employee and the customer. All tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices must either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices at the time this chapter is adopted must comply with this section within 30 days.

(B) This subdivision does not apply to retail stores which derive at least 90% of their revenue from tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices and which cannot be entered at any time by persons younger than 18 years of age.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.09 RESPONSIBILITY.

All licensees under this chapter are responsible for the actions of their employees, or any persons acting on their behalf, in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices on the licensed premises, and the sale of such an item by an employee is considered a sale by the license holder. Nothing in this section is construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.10 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises must be open to inspection by the Police Department or other authorized city official during regular business hours. From time to time, but at least as often as required by state law, the city will conduct compliance checks, following the procedures and requirements outlined in Minnesota state statutes. Nothing in this section prohibits other compliance checks authorized by state or federal law for educational, research, or training purposes, or as required for the enforcement of any local ordinance, or state or federal law.

(Ord. 1998-873, passed 4-13-98) Penalty, see § 122.99

§ 122.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts are a violation of this chapter:

(A) *Illegal sales.* It is a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device to any minor.

(B) *Illegal possession.* It is a violation of this chapter for any minor to have in the minor's possession any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device. This division (B) does not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It is a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device.

(D) *Illegal procurement.* It is a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device and it is a violation of this chapter for any person to purchase or otherwise obtain such items on behalf of a minor. It is further a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device. This division (D) does not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It is a violation of this chapter for any minor to attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15) Penalty, see § 122.99

§ 122.12 EXCEPTIONS AND DEFENSES.

Nothing in this chapter prohibits a native Indian from furnishing tobacco, tobacco products or tobacco related devices to an Indian under the age of 18 years if the tobacco is furnished as a part of a traditional Indian spiritual or cultural ceremony.

(Ord. 1998-873, passed 4-13-98)

§ 122.99 VIOLATIONS AND PENALTY.

(A) *Violations.*

(1) *Notice.* Upon discovery of a suspected violation, the alleged violator must be issued, either personally or by mail, a citation that sets forth the alleged violation and which must inform the alleged violator of their right to be heard on the accusation.

(2) *Hearings.* If a person accused of violating this chapter so requests, a hearing will be scheduled, the time and place of which must be published and provided to the accused violator.

(3) *Hearing Officer.* The City Council will periodically approve a list of persons, from which the City Manager or designated agent will randomly select a hearing officer to hear and determine a matter for which a hearing is requested.

(4) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under division (B) of this section, must be recorded in writing, a copy of which must be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings must be recorded and a copy provided to the acquitted accused violator.

(5) *Appeals.* Appeals of any decision made by the hearing officer must be filed in the district court for the city in which the alleged violation occurred.

(6) *Misdemeanor prosecution.* Nothing in this section prohibits the city or any other legitimate jurisdiction from seeking criminal prosecution for violations of this chapter or any other state or federal law regulating tobacco products.

(7) *Continued violation.* Each violation, and every day in which a violation occurs or continues, constitutes a separate offense.

(B) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee have violated this chapter, will be charged as follows:

(a) First violation of this chapter, an administrative fine of $75.

(b) Second offense at the same licensed premises within a 24-month period, an administrative fine of $200.

(c) Third offense at the same licensed location within a 24-month period, an administrative fine of $250 and the license will be suspended for seven days.

(d) Fourth offense at the same licensed location within a 24-month period, an administrative fine of $300 and the license will be suspended for 30 days.

(e) Fifth offense at the same licensed location within a 24-month period, an administrative fine of $350 and the license will be revoked.

(f) It is an affirmative defense to the charge of selling tobacco to a person under the age of 18 years in violation of this ordinance that the licensee or individual making the sale relied in good faith upon proof of age as follows:

1. A valid driver's license or identification card issued by the State of Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or

2. A valid military identification card issued by the United States Department of Defense; or

3. In the case of a foreign national, from a nation other than Canada, by a valid passport.

(2) *Other individuals*. Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter will be charged an administrative fee of $50.

(3) *Minors*. charges for minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, will be routed through the Hennepin County Juvenile diversion program.

(4) *Criminal prosecution*. Nothing in this section prohibits the city from seeking criminal prosecution for violations of this chapter or any other state or federal law regulating tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices.

(Ord. 1998-873, passed 4-13-98; Am. Ord. 2015-1192, passed 5-26-15)

CHAPTER 123: BODY ART ESTABLISHMENTS

Section

§ 123.01 FINDINGS AND PURPOSE.

(A) This chapter is enacted to establish standards to protect health, safety and general welfare of the people of the City of Brooklyn Park through regulation of body art establishments.

(B) The principal objectives of this chapter are:

(1) To prevent disease transmission;

(2) To correct and prevent conditions that may adversely affect persons utilizing body art establishments;

(3) To provide standards for the design, construction, operation, and maintenance of body art establishments; and

(4) To meet consumer expectations of the safety of body art establishments.

(Ord. 2011-1123, passed 1-3-11)

§ 123.02 GENERAL PROVISIONS.

(A) *Scope.* This chapter shall apply to all body art establishments where body art are conducted. Nothing in this chapter is intended to supersede the provisions in M.S. Chapter 146B that are otherwise applicable to body art establishments or body art technicians.

(B) *Incorporation by reference.* Except as otherwise provided for in this chapter, the provisions in M.S. Chapter 146B are incorporated by reference.

(Ord. 2011-1123, passed 1-3-11)

§ 123.03 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BODY PIERCING. The penetration or puncturing of the skin or tongue by any method for the purpose of inserting jewelry or other objects in or through the body. ***BODY PIERCING*** does not include the piercing of the outer perimeter or the lobe of the ear using a presterilized single-use stud-and-clasp ear-piercing system.

ESTABLISHMENT PLAN. A to-scale drawing of the establishment's physical and equipment layout illustrating the requirements of this chapter.

HEALTH AUTHORITY. The City of Brooklyn Park Code Enforcement and Public Health Division, its designated employees, or other designated agents.

(Ord. 2011-1123, passed 1-3-11)

§ 123.04 LICENSE ADMINISTRATION.

(A) *Administrative procedures.* Provisions of the City of Brooklyn Park General Business Regulations, Chapter 110, that are not covered by this chapter and do not conflict with provisions of this chapter shall apply as if fully set forth herein.

(B) *License required.* No person may own or operate a body art establishment without first having obtained an establishment license from the Health Authority.

(C) *Limit on number of licenses.* The number of licenses for body art establishments shall be limited to no more than one such

license for every 4,000 residents.

(D) *Licensing procedure.*

(1) *Application.* All applications, new and renewal, for licenses must be made upon forms furnished by the city. Upon payment of the required fee(s), the Health Authority will review the application. If the application is approved, a license will be issued.

(2) *Establishment license application.* Each establishment license application must describe the general nature of the business, the location, and any other information deemed necessary by the city.

(Ord. 2011-1123, passed 1-3-11)

§ 123.05 LICENSE EXPIRATION.

Licenses issued pursuant to this chapter shall commence and expire on the dates indicated on the license certificate.

(Ord. 2011-1123, passed 1-3-11)

§ 123.06 TRANSFER AND DISPLAY OF LICENSE.

Only a person who complies with the requirements of this chapter may be entitled to receive a license. A license is not transferable as to person or place. A valid license must be located onsite and available to the public upon request.

(Ord. 2011-1123, passed 1-3-11)

§ 123.07 LOCATION RESTRICTED.

(A) No individual may engage in body art activities at any place other than a licensed establishment.

(B) A body art establishment may only be located in non-residential areas and in districts as further determined by the city zoning code. Temporary body art establishments are prohibited.

(C) A body art establishment must be separated by at least 500 feet from another body art establishment, as measured from the closest point on the property lines of the body art establishments. No more than one body art establishment may be located on a single parcel of land.

(Ord. 2011-1123, passed 1-3-11) Penalty, see § 123.99

§ 123.08 ACTIVITIES PROHIBITED.

A body art establishment, a body art technician, or any other person may not perform branding, scarification, suspension, subdermal implantation, microdermal, or tongue bifurcation procedures.

(Ord. 2011-1123, passed 1-3-11) Penalty, see § 123.99

§ 123.09 INSPECTION AND PLAN REVIEW.

(A) *Inspection required.* The Health Authority will inspect each body art establishment before issuing a license for a new establishment, as part of a construction or remodeling plan review, as part of a complaint investigation, or at least once a year for a routine inspection, and as necessary to ensure compliance with all applicable regulations.

(B) *Construction inspections.* The body art establishment must be constructed in conformance with the approved plans. The Health Authority may inspect the body art establishment as frequently as necessary during the construction to ensure that the construction occurs in conformance with this chapter. The licensee or owner must contact the Health Authority to schedule a final inspection prior to the start of operations and issuance of a license or to resume operations after remodeling.

(C) *Access to premises and records.* The operator of the body art establishment must, upon request of the Health Authority and after proper identification, permit access to all parts of the establishment at any reasonable time, for the purpose of inspection. The operator must allow review of any records necessary for the Health Authority to ascertain compliance to this chapter.

(D) *Interference with the Health Authority.* No person may interfere with or hinder the Health Authority in the performance of its duties, or refuse to permit the Health Authority to make such inspections.

(E) *Removal and correction of violations.* Operator(s) or technician(s) must correct or remove each violation upon receipt of an inspection report giving notification of one or more violations of this chapter in a reasonable length of time as determined by the Health Authority. The length of time for the correction or removal of each such violation shall be noted on the inspection report. Failure to remove or correct each violation within the time period noted on the inspection report will constitute a separate violation of this chapter. The Health Authority may issue orders to halt construction or remodeling, or to take corrective measures to ensure compliance with this chapter.

(Ord. 2011-1123, passed 1-3-11) Penalty, see § 123.99

§ 123.10 GROUNDS FOR EMERGENCY CLOSURE.

If any violation of this code or relevant state statutes exists, the operator(s) or technician(s) may be ordered to discontinue all operations of the body art establishment. Body art establishments may only reopen with permission from the Health Authority.

(Ord. 2011-1123, passed 1-3-11)

§ 123.11 STANDARDS FOR HEALTH AND SAFETY.

No operator or body art establishment may engage in body art activities without complying with the following health and safety requirements:

(A) *Facilities.*

(1) *Establishment plan.* Any new or remodeled establishment must submit to the Health Authority a to-scale establishment plan in sufficient detail to ascertain compliance with conditions in this chapter.

(2) *Procedure area.* No less than 45 square feet of floor space for each procedure area must be provided. The procedure area(s) must be separated from the bathroom, retail sales area, hair salon area, or any other area that may cause potential contamination of work surfaces. For clients requesting privacy, dividers, curtains, or partitions at a minimum must separate multiple procedure areas.

(3) *Hand sink.* Each establishment must have a readily accessible hand sink that is not in a public restroom and is equipped with:

(a) Hot and cold running water under pressure;

(b) No touch faucet controls such as wrist or foot operated;

(c) Dispensed liquid hand soap;

(d) Dispensed single use paper towels: and

(e) A waste container.

(4) *Toilet facilities.* Every establishment must have at least one available bathroom equipped with a toilet and a hand lavatory, and in compliance with building codes. The hand lavatory must be supplied with:

(a) Hot and cold running water under pressure;

(b) Dispensed liquid hand soap;

(c) Dispensed single use paper towels or mechanical hand drier/blower;

(d) A waste container;

(e) A self-closing door; and

(f) Adequate ventilation.

(5) *Lighting*. The establishment must have an artificial light source equivalent to 20 foot candles at three feet above the floor. At least 100 foot candles of light must be provided at the level where body art procedure is performed, where sterilization takes place, and where instruments and sharps are assembled.

(6) *Surfaces*. All procedure surfaces must be smooth, nonabsorbent and easily cleanable.

(7) *Ceiling*. All ceilings must be in good condition.

(8) *Walls and floors*. All walls and floors must be free of open holes or cracks and washable. Carpeting may not be used in areas where body art procedures are performed.

(9) *Maintenance*. All facilities must be maintained in good working order. All facilities must be maintained in a clean and sanitary condition.

(10) *Facility use*. No establishment must be used or occupied for living or sleeping quarters.

(11) *Service animals*. Only service animals may be allowed in the establishment. No animals are allowed in the procedure area(s).

(12) *Pest control*. Effective measures must be taken by the operator to prevent entrance, breeding, and harborage of insects, vermin, and rodents in the establishment.

(Ord. 2011-1123, passed 1-3-11) Penalty, see § 123.99

§ 123.12 INDUSTRY SELF SURVEY AND TRAINING RESPONSIBILITY.

Every licensee of a body art establishment must arrange for and maintain a program of sanitation self-inspection conducted by the owner, operator, technician, or apprentice and approved by the Health Authority. The self-inspection program must include written policies, appropriate forms for logging self-inspections, and evidence that routine self-inspection of all aspects of the body art establishment takes place. A description of the body art establishment self-inspection program must be available for review.

(Ord. 2011-1123, passed 1-3-11) Penalty, see § 123.99

§ 123.13 FEES.

(A) *License fees*. Fees for licenses and plan review issued hereunder shall be those established from time to time by resolution of the City of Brooklyn Park City Council. An additional fee shall be charged for each additional service or operation that is separate, distinct or unique from the central or main body art establishment, as determined by the Health Authority.

(B) *Late fees*. If work has commenced prior to approval of construction or remodeling plans, late fees may be assessed in accordance with the fee schedule.

(Ord. 2011-1123, passed 1-3-11)

§ 123.99 PENALTY.

A person shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided by law if he/she:

(A) Violates this chapter;

(B) Permits a violation to exist on the premises under his/her control; or

(C) Fails to take action to abate the existence of the violationf(s) within a specified time period, when ordered or notified to do so by the Health Authority.

(Ord. 2011-1123, passed 1-3-11)

CHAPTER 124: MASSAGE THERAPY

Section

§ 124.01 PURPOSE.

The purpose of this chapter is to regulate massage therapists and therapeutic massage enterprises requiring that all be licensed pursuant to this chapter. The licensing regulations prescribed in this chapter are necessary in order to prevent criminal activity and to protect the health, safety, and general welfare of the people of the City of Brooklyn Park.

(Ord. 2013-1154, passed 3-4-13)

§ 124.02 FINDINGS.

It is found and determined that:

(A) Persons who have recognized and standardized training in therapeutic massage including in health and hygiene provide a legitimate and necessary service to the general public;

(B) Health and sanitation regulations governing therapeutic massage enterprises and massage therapists will minimize the risk of the spread of communicable diseases and promote health and sanitation;

(C) License qualifications for therapeutic massage enterprises and massage therapists will minimize the risk that such businesses and persons may facilitate prostitution and other criminal activity in the city;

(D) Massage services provided by persons without recognized and standardized training in massage can endanger members of the public by facilitating the spread of communicable diseases, by exposing persons to unhealthy and unsanitary conditions, and by increasing the risk of personal injury; and

(E) The training of professional massage therapists through accredited institutions and programs is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

(Ord. 2013-1154, passed 3-4-13)

§ 124.03 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ACCREDITED INSTITUTION. An educational institution holding accredited status from a school which has been licensed or registered by the Minnesota Office of Higher Education or similar agency of another state either presently or at the time the applicant obtained his or her diploma or certificate of graduation.

ACCREDITED PROGRAM. A professional massage program that is presently, or at the time the applicant obtained his or her diploma or certificate of graduation, accredited by the Commission on Massage Therapy Accreditation ("COMTA").

CLEAN. The absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.

GOOD REPAIR. Free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

HEALTH AUTHORITY. The city's registered sanitarian.

MASSAGE. Any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, stretching, or rolling of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

MASSAGE THERAPIST. An individual who practices or administers therapeutic massage to another for a fee or other consideration paid either directly or indirectly and who can demonstrate to the city that he or she has current insurance coverage of $1,000,000 for professional liability in the practice of massage and

(1) Has completed 600 hours of therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited institution or program. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the institution issuing the certificate or diploma. Individuals who completed training prior to the effective date of this chapter are only required to complete 500 hours of certified therapeutic massage training; or

(2) Has one year of experience practicing massage therapy as established by an affidavit and can document within two years of adoption of this chapter that he or she has completed at least 600 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited institution or program. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the institution issuing the certificate or diploma. This provision is only available to persons that are issued massage therapist licenses by the city within the first two years of the adoption date of this chapter.

MASSAGE THERAPIST LICENSE. A license issued by the city to a massage therapist authorizing the licensee to practice or administer massage in the city.

OPERATE. To own, manage, or conduct or to have control, charge, or custody over.

PERSON. Any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

THERAPEUTIC MASSAGE ENTERPRISE. A business which hires licensed massage therapists to provide therapeutic massage within the city for a fee or other consideration paid either directly or indirectly, that:

(1) Has one or more massage therapists employed or contracted to provided massage therapy for the therapeutic massage enterprise; or

(2) Is located in a fixed location within the city wherein massage therapy services are provided.

WITHIN THE CITY. Physical presence in the city as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment for employees who respond to requests for services within the city.

(Ord. 2013-1154, passed 3-4-13)

§ 124.04 LICENSE REQUIRED.

(A) *Massage therapy license.* It shall be unlawful for any person to practice massage therapy or provide or offer to provide massage therapy within the city without a massage therapist license issued by the city. This includes persons providing massage therapy at therapeutic massage enterprises that have therapeutic massage enterprise licenses.

(B) *Therapeutic massage enterprise license.* It shall be unlawful for any person or entity to operate a therapeutic massage enterprise within the city without a therapeutic massage enterprise license issued by the city. The owner or operator of a therapeutic massage enterprise need not be licensed as a massage therapist unless he or she personally provides massage services.

(C) A therapeutic massage enterprise located in a residential district must comply with all requirements set forth in § 152.262(B) of the City Code but shall be exempt from the vocation administrative permit requirement.

(D) A therapeutic massage enterprise license or massage therapist license is not required for the following:

(1) Persons licensed by the state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry or persons working for a licensed medical professional, provided that the massage is administered in the regular course of the medical treatment and is not being provided as part of a separate and distinct massage business;

(2) Persons licensed by the state as beauty culturists or barbers, provided the persons do not hold themselves out as giving massage treatments and further provided that massage by beauty culturists is limited to the head, hands, neck, and feet and massage by barbers is limited to the head and neck;

(3) Places licensed or operating as a hospital, nursing home, hospice, sanitarium, group home, or other health care office, clinic, or facility established for hospitalization or medical care;

(4) Athletic coaches, directors, and trainers employed by public or private schools;

(5) Accredited institutions and students of accredited institutions which provide an accredited program of study or course work in massage therapy, provided that the massage is provided during and as a part of the course or clinical component of the institution's program or course work and students are supervised by an instructor while performing the massage.

(6) Persons providing temporary massage services such as a "chair massage" provided that all of the following requirements are met:

(a) The massage is provided in a location where the massage can easily be seen by employees and visitors;

(b) The establishment where the massage is being provided does not hold a license to sell alcoholic beverages;

(c) Massages are offered at the establishment no more than ten days per calendar year;

(d) Each recipient of a massage remains in an upright position during the massage, either in a seated or standing position; and

(e) Each recipient of a massage remains fully clothed in the normal daytime attire worn when he or she enters the establishment and clothing except for outerwear such as coats and jackets is not removed.

(Ord. 2013-1154, passed 3-4-13)

§ 124.05 LICENSE APPLICATION.

(A) *Therapeutic massage enterprise license application.* An application for a therapeutic massage enterprise license shall be filed, along with all required fees and information with the city Licensing Division. The city shall conduct a background investigation on all first-time applicants. The application for a license under this section shall be made on a form supplied by the city and must contain the following information:

(1) For all applicants:

(a) Whether the applicant is an individual, corporation, partnership, or other form of organization and the name of the individual or organization;

(b) The full name, address, date and place of birth, social security number, and telephone number of the natural person designated by the applicant as the business's on-site manager or agent along with the notarized written consent of the person to:

1. Take full responsibility for the conduct of the licensed premises and operation;

2. Serve as the business's agent for purposes of service of notice and other processes related to the license by the city;

3. If the premises is under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are already on file with the city's Building Inspections Division, no plans need be submitted;

4. Proof of identification consisting of one of the following:

a. A valid driver's license or identification card issued by a state of the United States that includes the photograph and date of birth of the applicant;

b. A valid military identification card issued by the United States Department of Defense; or

c. A valid passport issued by the United States or another country if the applicant is a foreign national.

For purposes of satisfying this requirement, the "applicant" is deemed to be the on-site manager or agent for the business that is signing the application on behalf of the business; and

5. Such other information as the city may require.

(B) *Massage therapist license application.* An application for a massage therapist license shall be filed, along with all required fees and information with the city Licensing Division. The city shall conduct a background investigation on all first-time applicants. The application for a license under this section shall be made on a form supplied by the city and shall contain the following information:

(1) The full name, address, date and place of birth, social security number, and telephone number of the applicant;

(2) Evidence that the applicant has legal work status in the United States;

(3) Documentation to verify whether the applicant has met the definition of a massage therapist set forth by this chapter;

(4) Proof of identification consisting of one of the following:

(a) A valid driver's license or identification card issued by a state of the United States that includes the photograph and date of birth of the applicant;

(b) A valid military identification card issued by the United States Department of Defense; or

(c) A valid passport issued by the United States or another country if the applicant is a foreign national; and

(5) Such other information as the city may require.

(Ord. 2013-1154, passed 3-4-13)

§ 124.06 LICENSE TERMS AND FEES.

(A) The license and background investigation fees for licenses required by this chapter shall be determined by the City Council in the city's fee schedule. Penalties for late payments of license fees are set forth in § 110.38 of the City Code.

(B) Licenses expire annually on March 31. If a license application is received in the middle of a license term, the license fee shall be prorated for the remaining term of the license in accordance with § 110.39 of the City Code.

(Ord. 2013-1154, passed 3-4-13)

§ 124.07 LICENSE APPLICATION VERIFICATION AND CONSIDERATION.

(A) *Background investigation.* The City Manager must verify the information supplied in the license application and investigate the background, including the criminal background, of the applicant to assure compliance with this chapter, by referring the application to the Police Chief for a CCH Investigation.

(B) Massage therapist and therapeutic massage enterprise licenses will be issued by the City Manager upon completion of the

investigation and review of the application. In the event that the license is denied, notice will be sent to the applicant informing the applicant of the decision and his or her right to appeal the decision to the hearing officer pursuant to § 124.14 of this chapter.

(Ord. 2013-1154, passed 3-4-13)

§ 124.08 LICENSE ELIGIBILITY.

(A) *Therapeutic massage enterprise licenses.* The city may deny issuance of a therapeutic massage enterprise license in any of the following circumstances:

(1) The owner, operator, or any person who has a five percent financial interest in the business or the appointed on-site manager or agent has a conviction for, or was charged with, but convicted of a lesser charge of any crime which would reasonably pose an increased danger to the health and welfare of the public should the applicant be granted a license in the city as prescribed by M.S. § 364.03, Subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by M.S. § 364.03, Subd. 3;

(2) The owner, operator, or any person who has a five percent financial interest in the business or the appointed on-site manager or agent had a massage therapist or massage therapy business-related license in the city or another jurisdiction that was either suspended or revoked within five years preceding the date of application;

(3) The information provided in the application does not meet the requirements of this chapter;

(4) The applicant provided false or misrepresented information in the application;

(5) The business is proposed to be operated on premises on which property taxes, assessments, or other financial claims by the state, county, or city are due, delinquent, or unpaid, provided the applicant or other entity in which the applicant has an interest has the legal duty to pay said taxes, assessments, or claims due and owing;

(6) The applicant does not have insurance coverage in effect as required by this chapter;

(7) The applicant has been denied a license under this chapter within the preceding 12 months;

(8) The owner, operator, or any person who has a five percent financial interest in the business or the appointed on-site manager or agent applicant is not of good moral character or repute; or

(9) The proposed premises in which the business proposes to operate is located in a zoning district where the use is not allowed.

(B) *Massage therapist licenses.* The city may deny issuance of a massage therapist license in any of the following circumstances:

(1) The applicant has a conviction for, or was charged with, but convicted of a lesser charge of any crime which would reasonably pose an increased danger to the health and welfare of the public should the applicant be granted a license in the city as prescribed by M.S. § 364.03, Subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by M.S. § 364.03, Subd. 3;

(2) The applicant had a massage therapist or massage therapy business-related license in the city or another jurisdiction that was either suspended or revoked within five years preceding the date of application;

(3) The applicant is not 18 years of age or older;

(4) The information provided in the application does not meet the requirements of this chapter;

(5) The applicant provided false or misrepresented information on the application;

(6) The applicant does not have insurance coverage in effect as required by this chapter;

(7) The applicant has been denied a license under this chapter within the preceding 12 months; or

(8) The applicant is not of good moral character or repute.

(Ord. 2013-1154, passed 3-4-13)

§ 124.09 GENERAL LICENSE RESTRICTIONS.

(A) *Area*. A therapeutic massage enterprise license is effective only for the compact and contiguous space specified in the approved license application. If the licensed premises is proposed to be enlarged, altered, or extended, the licensee must inform the City Manager.

(B) *Coverings*. When performing a massage, the massage therapist must require that the person who is receiving the massage have his or her breasts (with respect to females), buttocks, anus, and genitals covered with clothing or a non-transparent material at all times. The massage therapist performing the massage must have his or her breasts, buttocks, anus, and genitals covered with clothing at all times.

(C) *Prohibited massages*. A massage therapist must not intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

(D) *Unlicensed massage therapists prohibited*. No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed by the city as a massage therapist under this chapter, unless the person is specifically exempted by this chapter from obtaining a massage therapist license.

(Ord. 2013-1154, passed 3-4-13)

§ 124.10 RESTRICTIONS REGARDING SANITATION AND HEALTH.

(A) A therapeutic massage enterprise must be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room must be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room must be kept clean and in good repair. It must be fully and adequately illuminated.

(B) A therapeutic massage enterprise must provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage. If the table, chair, or furniture on which a patron receives the massage is made of material impervious to moisture, such table, chair, or furniture must be sanitized after each massage.

(C) The massage therapist must wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.

(D) Massage tables, chairs, or furniture on which the patron receives the massage must have surfaces that can be readily disinfected after each massage.

(E) Rooms in a therapeutic massage enterprise must be adequately illuminated.

(F) Therapeutic massage enterprises must have a janitor's closet that provides for the storage of cleaning supplies.

(G) Therapeutic massage enterprises must provide adequate refuse receptacles that must be emptied as required by this chapter.

(H) Therapeutic massage enterprises must be continuously maintained in good repair and in a sanitary condition and must take reasonable steps to prevent the spread of infections and communicable diseases on the premises.

(I) Massage therapists must wear clean clothing when performing massage services.

(Ord. 2013-1154, passed 3-4-13)

§ 124.11 LICENSE SUSPENSION AND REVOCATION.

(A) A massage therapist license or therapeutic massage enterprise license may be revoked, suspended, or not renewed by the city if the licensee has engaged in any of the following conduct:

(1) Fraud, misrepresentation, or a false statement contained in a license application or a renewal application;

(2) Fraud, misrepresentation, or a false statement made in the course of carrying on the licensed occupation or business;

(3) Any violation of this chapter or state law;

(4) A licensee or in the case of a therapeutic massage enterprise license, the business's owner, operator, or any person who has

a five percent financial interest in the business or the appointed on-site manager or agent's criminal conviction that is directly related to the occupation or business licensed as defined by M.S. § 364.03, Subd. 2, provided that the person cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business as defined by M.S. § 364.03, Subd. 3.

(5) Conduct involving moral turpitude or permitting or allowing others within their employ or organization to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees from engaging in conduct involving moral turpitude; or

(6) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.

(B) Before the city may revoke, suspend, deny or not renew a license, written notice must be sent to the applicant or owner/licensee setting forth the alleged grounds for the potential action. The notice must also specify a date upon which hearing on the action before the city's Hearing Officer must be requested, which must not be less than ten days from the date of the notice.

(Ord. 2013-1154, passed 3-4-13)

§ 124.12 TRANSFER AND DISPLAY OF LICENSE.

(A) *Transfer.* Only a person who complies with the requirements of this chapter is entitled to receive a license. The license issued is for the person or the entity named on the license. The license is not transferrable. However, a massage therapist license is not considered to be transferred with respect to this section if the licensed individual moves to a different place of employment or location.

(B) *Display/possession.* A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. A person licensed as a massage therapist must have in his or her possession a copy of the license when massage services are being rendered.

(Ord. 2013-1154, passed 3-4-13)

§ 124.13 INSPECTIONS.

The Health Authority and law enforcement shall have the right to enter, inspect, and search the licensee's premises without a search and seizure warrant during the hours in which the massage business is being operated. The business records of the licensee shall be available for inspection by the city during the hours in which the massage business is being operated.

(Ord. 2013-1154, passed 3-4-13)

§ 124.14 APPEAL AND HEARING PROCEDURE.

A hearing officer shall hold hearings on contested massage therapist and therapeutic massage enterprise license revocations, suspensions, denials, and non-renewals. The hearing officer shall be a person appointed by the City Council. At the hearing, the applicant/licensee may speak on his or her behalf and may present witnesses and other evidence he or she deems necessary. In the event that a violation of this chapter is involved, the hearing officer may give due regard to the frequency and seriousness of violations, the ease with which such violations could have been cured or avoided, and the licensee's good faith efforts to comply. Upon the conclusion of the hearing, the hearing officer shall issue a written decision that includes findings of fact. The city shall provide the applicant/licensee with a copy of the hearing officer's decision. The applicant/licensee may appeal the hearing officer's decision to the Minnesota Court of Appeals by writ of certiorari.

(Ord. 2013-1154, passed 3-4-13) Penalty, see § 10.99

TITLE XIII: GENERAL OFFENSES

Chapter

CHAPTER 130: GENERAL OFFENSES

Section

§ 130.01 LOITERING PROHIBITED.

(A) *Petty misdemeanors.* Whoever commits any of the following acts is guilty of a petty misdemeanor:

(1) Lingering about the doorway of any building, or sitting or lingering upon the steps, window sills, railing, fence, or parking area adjacent to any building in such a manner so as to obstruct or partially obstruct ingress to or egress from such building or in such a manner to annoy the owner or occupant.

(2) Remaining for more than five minutes on any private business premise which is posted with a conspicuous sign containing the words "No Loitering" when the business establishment is closed; or the person charged does not visibly demonstrate any intent to conduct business at the establishment or to leave the premise after having conducted such business.

(3) Remaining for more than five minutes on any public business premise which is posted with a conspicuous sign containing the words "No Loitering" when such premise neither has been nor will be open for business within 30 minutes.

(4) Remaining for more than five minutes on any public or private non-business premise which is posted with a conspicuous sign containing the words "No Loitering."

(5) Lingering for any length of time upon any public or private premises or moving in a slow and deliberate manner without purpose or otherwise interfering with, obstructing, or rendering dangerous or unreasonable for passage, any public highway, sidewalk, parking area or right-of-way after having been warned within the preceding four months, either orally or in writing, by the owner, agent, manager or person in charge thereof, or by any law enforcement agent or official, that such conduct will result in a charge under this section.

(B) *Misdemeanors.* Whoever commits any of the following acts is guilty of a misdemeanor:

(1) Failing or refusing to vacate or leave any premises after being requested or ordered, either orally or in writing, to do so by the owner, agent, manager or person in charge thereof, or by any law enforcement agent or official or returning at any time thereafter to any such premise after having been so requested or ordered to vacate such premise.

(2) Any of the acts described in division (A) of this section within one year of being found guilty of any violation of division (A) of this section.

(C) *Premises.* For purposes of this section, ***PREMISES*** includes any yard, lot, parcel, sidewalk, boulevard, street, highway, alley, park, playground, restaurant, café, church, school, any car or other motor vehicle, parking lot, drive-in, building used for business, commercial or industrial purposes, washroom or lavatory, apartment hallway or other location whether public or private in the City of Brooklyn Park. Business premises include all premises, whether public or private, which include a facility that has established open and closed hours. Non-business premises include all other premises in the City of Brooklyn Park.

('72 Code, § 914:00) (Ord. 1993-733, passed 9-27-93) Penalty, see § 10.99

§ 130.02 ATTEMPTED OFFENSES AND LIABILITY.

(A) *Attempts.* Whoever, with intent to commit a penal offense or misdemeanor, does an act which is a substantial step toward, and more than preparation for, the commission of the penal offense or misdemeanor is guilty of an attempt to commit that penal offense or misdemeanor.

(B) *Liability for illegal acts of another.* A person is guilty of a penal offense and is personally liable for any penal offense or misdemeanor committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the penal offense or misdemeanor.

('72 Code, § 980:00) Penalty, see § 10.99

§ 130.03 USE OF MOTOR POWERED CRAFT ON SHINGLE CREEK.

It is unlawful to operate a motor operated or powered watercraft or boat, including waterborne aircraft, on Shingle Creek within the city.

('72 Code, § 985:00) (Ord. 1978-256(A), passed 1-9-78) Penalty, see § 10.99

CHAPTER 131: OFFENSES AGAINST JUSTICE

Section

Obstructing Justice

OBSTRUCTING JUSTICE

§ 131.01 THREATS.

It is unlawful to directly or indirectly address any threat or intimidation to a public officer or to a referee, arbitrator, appraiser or assessor or to any other person authorized by law to hear or determine any controversy or matter with intent to induce the person contrary to the person's duty to do or make or to omit or delay any act, decision or determination.

('72 Code, § 940:00) Penalty, see § 10.99

§ 131.02 CONSPIRACY.

It is unlawful for two or more persons to conspire to commit any act injurious to public health, public morals, trade or commerce or for the perversion or obstruction of public justice or the due administration of the law.

('72 Code, § 940:05) Penalty, see § 10.99

§ 131.03 OBSTRUCTING LEGAL PROCESS OR ARREST.

It is unlawful to intentionally obstruct, hinder, or prevent the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense or interfere with a peace officer while the officer is engaged in the performance of the officer's official duties.

('72 Code, § 940:10) Penalty, see § 10.99

§ 131.04 RESISTING ARREST.

It is unlawful to resist in any way any police officer engaged in the lawful discharge of the officer's duty in attempting to take such person into custody.

('72 Code, § 940:11) (Ord. 1973-142(A), passed 5-14-73; Am. Ord. 1984-445(A), passed 2-27-84) Penalty, see § 10.99

§ 131.05 FALSELY REPORTING CRIME.

It is unlawful to inform a law enforcement officer that a crime has been committed, knowing that it is false and intending that the officer shall act in reliance upon it.

('72 Code, § 940:15) Penalty, see § 10.99

CHAPTER 132: CURFEW FOR MINORS

Section

§ 132.01 CURFEW FOR MINORS.

(A) *Purpose.* The curfew for minors established by this section is maintained for four primary reasons:

(1) To protect the public from illegal acts of minors committed during the curfew hours;

(2) To protect minors from improper influences that prevail during the curfew hours, including involvement with gangs;

(3) To protect minors from criminal activity that occurs during the curfew hours; and

(4) To help parents control their minor children.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMERGENCY ERRAND. A task that if not completed promptly threatens the health, safety, or comfort of the minor or a member of the minor's household. The term shall include, but shall not be limited to, seeking urgent medical treatment, seeking urgent assistance from law enforcement or fire department personnel, and seeking shelter from the elements or urgent assistance from a utility company due to a natural or human-made calamity.

OFFICIAL CITY TIME. The time of day as determined by Hennepin County Dispatch.

PLACES OF AMUSEMENT, ENTERTAINMENT OR REFRESHMENT. Those places that include, but are not limited to, movie theaters, pinball arcades, shopping malls, nightclubs catering to minors, restaurants, and pool halls.

PRIMARY CARE or ***PRIMARY CUSTODY.*** The person who is responsible for providing food, clothing, shelter, and other basic necessities to the minor. The person providing primary care or custody to the minor must not be another minor.

SCHOOL ACTIVITY. An event which has been placed on a school calendar by public or parochial school authorities as a school sanctioned event.

(C) *Hours.*

(1) *Minors under the age of 12 years.* It is unlawful for a minor under the age of 12 years to be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; or in or upon places of amusement, entertainment or refreshment; or in or upon any vacant lot, after 9:00 p.m., official city time, on Sunday through Thursday nights, and after 10:00 p.m., official city time, on Friday and Saturday nights.

(2) *Minors ages 12 to 14.* It is unlawful for a minor of the age of 12, 13, or 14 years to be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; or in or upon places of amusement, entertainment or refreshment; or in or upon any vacant lot, after 10:00 p.m., official city time, on Sunday through Thursday nights, and after 11:00 p.m. on Friday and Saturday nights.

(3) *Minors ages 15 years to 18 years.* It is unlawful for a minor of the age of 15, 16 or 17 years to be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; or in or upon places of amusement, entertainment or refreshment; or in or upon any vacant lot, after 11:00 p.m., official city time, on Sunday through Thursday nights, and after 12:01 a.m. on Friday and Saturday.

(D) *Effect on control by adult responsible for minor.* Nothing in this section will be construed to give a minor the right to stay out until the curfew hours designated in this section if otherwise directed by a parent, guardian, or other adult person having the primary care and custody of the minor; nor will this section be construed to diminish or impair the control of the adult person having the primary care or custody of the minor.

(E) *Exceptions.* The provisions of this section do not apply in the following situations:

(1) To a minor accompanied by the minor's parent or guardian, or other adult person having the primary care and custody of the minor;

(2) To a minor who is upon an emergency errand at the direction of the minor's parent, guardian, or other adult person having the primary care and custody of the minor;

(3) To a minor who is in any of the places described in this section if in connection with or as required by an employer engaged in a lawful business, trade, profession, or occupation; or to a minor traveling directly to or from the location of such business trade, profession, or occupation and the minor's residence. Minors who fall within the scope of this exception must carry written proof of employment and proof of the hours the employer requires the minor's presence at work.

(4) To a minor who is participating in or traveling directly to or from an event which has been officially designated as a school activity by public or parochial school authorities; or who is participating in or traveling directly to or from an official activity supervised by adults and sponsored by the city, a civic organization, school, religious institution, or similar entity that takes responsibility for the minor and with the permission of the minor's parent, guardian, or other adult person having the primary care and custody of the minor.

(5) To a minor who is passing through the city in the course of interstate travel during the hours of curfew.

(6) To a minor who is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly, or freedom of religion.

(7) To minors on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor does not complain to the city's designated law enforcement provider about the minor's presence.

(8) To a minor who is married or has been married, or is otherwise legally emancipated.

(F) *Duties of person legally responsible for minor.* It is unlawful for a parent, guardian, or other adult having the primary care or custody of any minor to permit any violation of the requirements of this section by the minor.

(G) *Duties of other persons.* It is unlawful for a person operating or in charge of any place of amusement, entertainment, or refreshment to permit any minor to enter or remain in the person's place of business during the hours prohibited by this section unless the minor is accompanied by the minor's parent, guardian or other adult person having primary care or custody of the minor, or unless one of the exceptions to this section apply.

(H) *Defense.* It is a defense to prosecution under this section that the owner, operator, or employee of an establishment promptly notified the city's designated law enforcement provider that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Penalty, see § 132.99

§ 132.99 PENALTY.

(A) *Minors.* Any minor found to be in violation of § 132.01 may be adjudicated delinquent and is subject to the dispositional alternatives set forth in M.S. § 260.185, as amended.

(B) *Adults.* Any adult person found to be in violation of § 132.01 is guilty of a misdemeanor and may be sentenced up to the maximum penalty authorized by state law for a misdemeanor.

CHAPTER 133: OFFENSES AGAINST PROPERTY

Section

TRESPASSING ON PRIVATE PROPERTY

§ 133.01 PURPOSE.

The purpose of this subchapter is to enable private owners of real property, situated within the city and to which the public has some implicit right of access, to exclude persons from that property where the person has committed a crime on the premises or violated the properly posted rules of conduct for the property.

('72 Code, § 912:00) (Ord. 1993-727, passed 7-12-93)

§ 133.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

COMMON AREAS. All areas of the property which are maintained for the common use of its tenants or the general public incidental to the conduct of the normal and legitimate activities upon the premises, including but not limited to parking lots and ramps, private roadways, reception areas, rotunda, waiting areas, hallways, restroom facilities, elevators, escalators, and staircases.

COVERED PREMISES. Any improved real property, or portion thereof, to which the public has an implicit right of access including, but not limited to, places of worship, shopping malls, retail sales facilities, hotels, motels, nursing homes, restaurants, multiple-family residential buildings, hospitals, medical and dental offices, clubs, lodges, office buildings, banks and financial institutions, transit stations, athletic and recreational facilities, personal service establishments, theaters, and day care facilities.

PROPERTY MANAGER. Any owner of a covered premises or the agent thereof who is authorized to exercise control over the property, including common areas. The term ***PROPERTY MANAGER*** includes any tenant who is an owner of the property or agent of the owner and authorized to exercise control over the property, including common areas.

TENANT. Any authorized occupant of a covered premises, or the agent thereof.

TRESPASS NOTICE. A written notice which contains minimally the following information:

(1) A verbatim copy of § 133.04 hereof.

(2) The name, date of birth, and address of the person to whom the notice is issued and the name of the person's custodial parent or guardian where that person is a juvenile.

(3) A description of the specific conduct which serves as a basis for the notice's issuance.

(4) A description of the specific property to which the trespass notice applies.

(5) The period during which the trespass notice is in effect, including the date of its expiration.

(6) The name, title, and telephone number of a person with authority to modify, amend, or rescind the trespass notice prior to its normal expiration.

(7) The method by which the trespass notice was served upon the person to whom it was issued.

('72 Code, § 912:05) (Ord. 1993-727, passed 7-12-93)

§ 133.03 WHEN TRESPASS NOTICE MAY ISSUE.

A property manager or tenant may issue a trespass notice as provided under this subchapter only under the following circumstances:

(A) Where there is probable cause to believe that the person has committed an act prohibited by state statute or city ordinance while on the covered premises, whether on common areas or a tenant's space; or

(B) Where there is probable cause to believe that the person has violated the rules of conduct for the property which have been conspicuously posted at all public entrances to the property or have been personally provided to the person in writing by the property manager or tenant.

('72 Code, § 912:10) (Ord. 1993-727, passed 7-12-93)

§ 133.04 PROHIBITED CONDUCT.

(A) It is unlawful to trespass in or upon any private property and, without claim of right, refuse to depart therefrom on demand of the property manager or tenant.

(B) It is unlawful for a person who has been served with a trespass notice in conformity with this section to enter the premises described therein during its effective period without the written permission of the issuing property manager or tenant or the authorized agent thereof named in the notice. Violation of the terms of the notice will result in criminal prosecution with potential incarceration of up to 90 days in jail and a potential fine of up to $700.

(C) It is unlawful to enter any area of private property in violation of conspicuously posted signs prohibiting or restricting access thereto, including but not limited to the following signs: "No Trespassing," "Authorized Personnel Only," "Private," "Employees Only," or "Emergency Exit Only."

('72 Code, § 912:15) (Ord. 1993-727, passed 7-12-93) Penalty, see § 10.99

§ 133.05 ADDITIONAL PROVISIONS.

(A) Where a trespass notice is issued by a tenant, who is not the property manager, the notice is effective only as to that portion of the premises over which the tenant is entitled to exercise control.

(B) No trespass notice will be effective for more than one year from the date of its original issuance.

(C) All trespass notices issued pursuant to this section must be properly served upon the person named therein as follows:

(1) Personal service documented by either a receipt signed by the person to whom it was issued or an affidavit of the issuer; or

(2) Where the person named in the trespass notice is arrested by a police officer for an act prohibited by state statute or city ordinance, the arresting officer may personally serve the notice on behalf of the property manager or tenant and so document that fact in the officer's official police report detailing the incident.

('72 Code, § 912:20) (Ord. 1993-727, passed 7-12-93)

INJURY TO PROPERTY

§ 133.15 INJURY TO PROPERTY.

It is unlawful to wilfully or maliciously displace, remove, injure or destroy:

(A) A highway or private way laid out by authority of law or bridge upon such public or private way;

(B) A tree, rod, post or other monument which has been erected or marked for the purpose of designating a point in any boundary or any mark or inscription thereon;

(C) A mile board, milestone or guide post erected upon a highway or any inscription thereon;

(D) A line of telegraph or telephone or any part thereof or any appurtenance or apparatus connected with the working of any magnetic or electric telegraph or telephone or the sending or conveying of messages thereby;

(E) The pipe or main for conducting gas or water or heat or any works erected for supplying building with gas or water or heat or any appurtenance or appendage connected therewith;

(F) A sewer or drain or a pipe or a main connected therewith or forming a part thereof.

('72 Code, § 935:00) Penalty, see § 10.99

§ 133.16 CROPS.

It is unlawful to maliciously injure or destroy any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which punishment has not been otherwise prescribed.

('72 Code, § 935:05) Penalty, see § 10.99

§ 133.17 BUILDINGS.

It is unlawful in any manner to wilfully damage any building or part thereof, throw any stone or other missile at or break any window therein or aid, counsel, hire or procure any persons to do so.

('72 Code, § 935:10) Penalty, see § 10.99

CHAPTER 134: OFFENSES AGAINST PUBLIC PEACE AND SAFETY

Section

General Provisions

Disorderly Conduct

Conduct on School Grounds

GENERAL PROVISIONS

§ 134.01 ASSAULT.

Whoever commits an act with intent to cause fear in another of immediate bodily harm or death or intentionally inflicts or attempts to inflict bodily harm upon another commits an assault and is guilty of a misdemeanor.

Penalty, see § 10.99

§ 134.02 LURKING.

It is unlawful for any person in a public or private place to lurk, lie in wait or be concealed with intent to do any mischief or to commit any crime or unlawful act.

('72 Code, § 922:00) (Ord. 1978-274(A), passed 8-28-78) Penalty, see § 10.99

§ 134.03 NOISY PARTIES.

(A) It is unlawful, between the hours of 10:00 p.m. and 7:00 a.m., to congregate because of or participate in any party or gathering of people from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area.

(B) It is unlawful to visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating the disturbance.

('72 Code, § 965:00) Penalty, see § 10.99

§ 134.04 SOCIAL HOST.

(A) *Purpose and findings.*

(1) The Brooklyn Park City Council seeks to reduce underage possession and consumption of alcohol by imposing criminal penalties on those person(s) who host events or gatherings where persons under 21 years of age possess or consume alcohol.

(2) The Brooklyn Park City Council finds that:

(a) Alcohol is an addictive drug, which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of the irresponsible user.

(b) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of 21 are harmful to those persons and constitute a potential threat to public health, safety, and welfare requiring prevention or abatement.

(c) Holding persons criminally responsible for hosting or permitting an event or gathering where underage possession or consumption of alcohol occurs will help deter underage consumption.

(B) *Definitions.* For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl or spirits of wine, liqueur, cordials, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.

ALCOHOLIC BEVERAGE. Alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

ADULT. Any person 18 years of age or older.

EVENT or ***GATHERING.*** Any group of three or more persons who have assembled or gathered together for a social occasion or other activity. An event or gathering shall not include assemblies or gatherings occurring on the licensed property of a retail intoxicating liquor or 3.2 percent malt liquor licensee, municipal liquor store, or bottle club permit holder who is regulated by M.S. § 340A.503.

HOST. To permit, aid, conduct, entertain, organize, supervise, or control an event or gathering.

PARENT. Any person having legal custody of a juvenile as a natural parent, adoptive parent, step parent, legal guardian, or a person to whom legal custody has been given by order of the court.

PERSON. An individual, partnership, co-partnership, corporation, or any association of one or more individuals.

RESIDENCE or ***PREMISES.*** Any home, yard, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented, or used with or without permission or compensation.

UNDERAGE PERSON. Any person under the age of 21 years.

(C) *Prohibited acts.*

(1) It is unlawful for any person(s) to:

(a) Host an event or gathering;

(b) At any residence, premises, or on any other private or public property;

(c) Where alcohol or alcoholic beverages are present; and

(d) When the person knows or has reason to know that an underage person will or does:

1. Consume any alcohol or alcoholic beverage; or

2. Possess any alcohol or alcoholic beverage with the intent to consume it.

(2) It is a violation of this division (C) if the person intentionally aids, advises, hires, counsels, or conspires with another or otherwise procures another to commit the prohibited act.

(3) A person who hosts an event or gathering does not have to be present at the event or gathering to be criminally responsible for a violation of this division (C).

(D) *Penalty*. A violation of this section is a misdemeanor.

(E) *Exceptions*.

(1) It shall be an affirmative defense to a violation of division (C) that the defendant is the parent of the underage person and that the defendant gave or furnished the alcoholic beverage to that person solely for consumption in the defendant's household.

(2) It shall be an affirmative defense to a violation of division (C) that the conduct was part of a legally protected religious observance.

(F) *Severability*. If any section, subsection, sentence, clause, part, provision, phrase, word, or other portion of this section is, for any reason, held to be unconstitutional or invalid, in whole or in part by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this chapter, which remaining portions shall continue in full force and effect.

(Ord. 2011-1125, passed 4-4-11)

DISORDERLY CONDUCT

§ 134.15 DISORDERLY CONDUCT DEFINED.

A person is guilty of disorderly conduct if, with a purpose to cause danger, alarm, disorder or nuisance, or if with the knowledge that the person is likely to create such public danger, alarm, disorder or nuisance, the person willfully:

(A) Creates a disturbance of the public order by an act of violence or by any act likely to produce violence; or

(B) Engages in fighting, or in violent, threatening or tumultuous behavior; or

(C) Makes any unreasonably loud noise; or

(D) Addresses abusive language or threats to any person present which creates a clear and present danger of violence; or

(E) Causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, where three or more persons are committing acts of disorderly conduct in the immediate vicinity; or

(F) Damages, befouls or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition; or

(G) Disturbs any assembly, or meeting not unlawful in its character or the peace and quiet of any family or neighborhood; and

(H) Lewdly exposes his or her person or the private parts thereof or procuring another to expose himself or herself and any open or gross lewdness or lascivious behavior or any act of public indecency;

(I) Uses profane, vulgar or indecent language in or about any public building, store or place of business or upon any of the streets, alleys, or sidewalks of this municipality so as to be audible and offensive;

(J) Drinks intoxicating liquor on any street or in a vehicle upon a public street;

(K) Commits a trespass on residential, public, or commercial or business property. Trespass for the purpose of this ordinance

means:

(1) Entering upon, or refusing to leave, any residential property of another, either where such property has been posted with "NO TRESPASSING" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry, or continued presence, is prohibited.

(2) Entering upon, or refusing to leave, any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning property, where such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, or designated agent or a police officer.

(3) Entering upon, or refusing to leave, any commercial or business property, including semi-public areas such as parking lots, malls, corridors, and commons, where immediately prior to such entry, or subsequent thereto, notice is given by the owner or lessee, or designated agent, orally or in writing, that such entry, or continued presence, is prohibited.

('72 Code, § 920:00) (Am. Ord. 1984-458(A), passed 6-11-84) Penalty, see § 10.99

§ 134.16 EXCLUSIONS.

This subchapter does not apply to peaceful picketing, public speaking or other lawful expressions of opinion not in contravention of other laws.

('72 Code, § 920:05)

§ 134.17 OFFENSE.

It is unlawful to engage in disorderly conduct in the City of Brooklyn Park.

('72 Code, § 920:10) Penalty, see § 10.99

§ 134.18 NOISE IN RESIDENTIAL AREAS.

(A) It is unlawful, between the hours of 10:00 p.m. and 7:00 a.m., to congregate because of or participate in any party or gathering of people from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area.

(B) It is unlawful to visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating the disturbance.

(C) A police officer may order all persons present, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this subchapter. Owners or tenants of the dwelling unit must immediately abate the disturbance and if they do not abate the disturbance they are in violation of this subchapter.

('72 Code, § 920:15) Penalty, see § 10.99

§ 134.19 RADIOS, TAPES, AND DISC PLAYERS, AND THE LIKE.

(A) It is unlawful to play, use, or operate any radio, tape or disc player, musical instrument, phonograph, or other machine or device for the production of sound in such a manner, considering the time and place and the purpose for which the sound is produced, as to unreasonably disturb the peace, quiet, or repose of a person or persons of ordinary sensibility.

(B) The play, use, or operation of any radio, tape or disc player, musical instrument, phonograph, or other machine or device for the production of sound in such a manner as to be plainly audible at a distance of 50 feet from said machine or device is prima facie evidence of a violation of this section.

(C) When sound violating this section is produced by a machine or device that is located in or on a vehicle, the vehicle's owner is not present, the person in charge of the vehicle at the time is guilty of the violation.

(D) This section does not apply to sound produced by the following:

(1) Amplifying equipment used in connection with activities for which permits have been granted;

(2) Anti-theft devices; and

(3) Machines or devices for the production of sound on or in authorized emergency vehicles.

(E) With the exception of the machines and devices listed in division (D) of this section, this section applies to all radios, tape and disc players, musical instruments, phonographs, and machines and devices for the production of sound, whether on public or private property.

(F) A violation of this section is punishable as a petty offense.

('72 Code, § 920:20) (Ord. 1994-762, passed 5-23-94) Penalty, see § 10.99

CONDUCT ON SCHOOL GROUNDS

§ 134.30 DEFACEMENT OF SCHOOL BUILDINGS.

It is unlawful to mark with ink, paint, chalk or other substance, or post hand bills on, or in any other manner deface or injure any school building or structure used or usable for school purposes within the city, or to mark, deface or injure fences, trees, lawns, or fixtures appurtenant to or located on the site of such buildings, or to post hand bills on such fences, trees or fixtures, or to place a sign anywhere on any such site.

('72 Code, § 910:00) Penalty, see § 10.99

§ 134.31 BREACH OF PEACE ON SCHOOL GROUNDS.

It is unlawful to willfully or maliciously make or assist in making on any school grounds adjacent to any school building or structure any noise, disturbance or improper diversion or activity by which peace, quiet and good order shall be disturbed.

('72 Code, § 910:05) Penalty, see § 10.99

§ 134.32 OFFENSIVE LANGUAGE AND CONDUCT.

It is unlawful to use offensive obscene or abusive language or engage in boisterous or noisy conduct tending reasonably to arouse alarm, anger or resentment in others on any school grounds or in buildings or structures.

('72 Code, § 910:10) Penalty, see § 10.99

§ 134.33 IMPROPER CONDUCT WHILE SCHOOL IN SESSION.

It is unlawful to, in any school room or in any building or on the grounds adjacent to the same, disturb or interrupt the peace and good order of such school while in session. It is unlawful for a person not in immediate attendance in such school and being in such building or upon the premises belonging thereto to conduct or behave himself or herself improperly. It is unlawful for a person, upon the request of a teacher of such school or the person in charge thereof to leave said building or premises, to neglect or refuse so to do.

('72 Code, § 910:20) Penalty, see § 10.99

§ 134.34 LOITERING.

It is unlawful to loiter on any school grounds or in any school building or structure.

('72 Code, § 910:20) Penalty, see § 10.99

§ 134.35 TRESPASSING ON SCHOOL PROPERTY.

(A) *Definitions.* For purposes of this section, the terms defined in this section have the meanings given them.

PUBLIC SCHOOL. Any school building, school grounds, play area, parking lot or athletic field owned or leased by Independent School District 11, 279, 281 or 287.

SCHOOL OFFICIAL. The licensed administrators or instructional staff or any other person so authorized by the school boards named in the definition for "public school."

VEHICLE. This term includes: automobiles; motorcycles; trucks; snowmobiles; recreational vehicles or any other type of vehicle used to transport people and/or goods.

(B) *Trespassing prohibited.* It is unlawful to trespass in or upon any public school by remaining upon the school premises after being ordered to leave the public school by a school official.

(C) *Permission required for re-entry.* It is unlawful for a person, having been ordered by a school official to leave a public school and having left the premises, to re-enter the public school without the written permission of the school administrator in charge or the school official who gave the order to leave the public school.

(D) *Operation of vehicles.* It is unlawful to operate or be in actual physical control of any vehicle in or upon any public school premises, except for the purpose of using designated parking areas for parking in connection with a school or school sanctioned function. The parking areas are as designated and appropriately marked by the officials of each school.

('72 Code, § 910:25) (Ord. 1982-390(A), passed 5-24-82) Penalty, see § 10.99

CHAPTER 135: DRUG OFFENSES

Section

§ 135.01 STATE STATUTE INCORPORATED.

The five schedules of controlled substances listed in M.S. § 152.02, as amended, are hereby incorporated in and made a part of this chapter as completely as if set out herein in full. For the purposes of this chapter, a ***CONTROLLED SUBSTANCE*** is any substance listed in the five schedules of controlled substances in M.S. § 152.02.

('72 Code, § 961:00) (Ord. 1984-458(A), passed 6-11-84; Am. Ord. 1991-686(A), passed 12-23-91)

Penalty, see § 10.99

§ 135.02 PROHIBITED ACTS.

It is unlawful for any person to grow, cultivate, manufacture, possess, constructively possess, sell, give away, barter, exchange,

distribute, or otherwise transfer any controlled substance, except on a lawful prescription by a person licensed by law to prescribe and administer controlled substances.

('72 Code, § 961:05) (Ord. 1984-458(A), passed 6-11-84; Am. Ord. 1991-686(A), passed 12-23-91) Penalty, see § 10.99

§ 135.03 POSSESSION DEFINED.

POSSESSION means having the controlled substance on one's person or in constructive possession including, but not limited to, constructive possession by that owner of a motor vehicle or by that driver of a motor vehicle if the owner is not present who keeps or allows to be kept in the motor vehicle a controlled substance.

('72 Code, § 961:10) (Ord. 1984-458(A), passed 6-11-84)

§ 135.04 EXCEPTED LAWFUL BUSINESSES AND PROFESSIONS.

Section 135.02 of this chapter does not apply to the following in the ordinary course of their trade, their business, or profession provided, however, this exception is not a defense to the doing of the acts prohibited in § 135.05 of this chapter:

(A) Practitioners, persons licensed by law to prescribe and administer controlled substances.

(B) Pharmacists duly registered and licensed with the Minnesota State Board of Pharmacy.

(C) Manufacturers.

(D) Pharmacists as manufacturers.

(E) Wholesalers.

(F) Warehouse person.

(G) Persons engaged in transporting such controlled substances as agent or employee of a practitioner, pharmacist, manufacturer, warehouse person, wholesaler, common carrier.

(H) Public officers or public employees in the performance of official duties requiring possession or control of such controlled substances, or persons aiding such officers or employees in the performance of such duties.

(I) Any patient as herein defined with respect to procuring, possession and use of a controlled substance in accordance with the terms of a prescription and prescribed treatment.

(J) Persons who procure, possess or use such controlled substance for the purpose of lawful research, teaching or testing, and not for sale.

(K) Lawfully licensed and registered hospitals or bona fide institutions wherein sick or injured persons are cared for and treated, or by bona fide hospitals for the treatment of animals.

('72 Code, § 961:15) (Ord. 1984-458(A), passed 6-11-84)

§ 135.05 UNLAWFUL PROCURING, PURCHASE, DELIVERY OR POSSESSION.

It is unlawful to procure, purchase, deliver or possess, or attempt to procure, purchase, deliver or possess a controlled substance in any of the following manners:

(A) By fraud, deceit, misrepresentation or subterfuge; or

(B) By the forgery or alteration of a prescription; or

(C) By the concealment of a material fact; or

(D) By the use of a false name or the giving of a false address; or

(E) By making a false statement in any prescription, order, report, or record relative to a controlled substance; or

(F) By falsely assuming the title of, or falsely representing any person to be a manufacturer, wholesaler, warehouse person, pharmacist, practitioner or other person described in § 135.04 of this chapter.

(G) By making, issuing or uttering any false or forged prescription.

('72 Code, § 961:20) (Ord. 1984-458(A), passed 6-11-84) Penalty, see § 10.99

§ 135.06 CONFISCATION AND DISPOSITION OF CONTROLLED SUBSTANCES.

Any controlled substance found in the possession of any person convicted of a violation of this chapter will be confiscated and must be forfeited to the Chief of Police who will make proper and timely disposition thereof by destroying it.

('72 Code, § 961:25) (Ord. 1984-458(A), passed 6-11-84)

§ 135.07 USE OF ORIGINAL CONTAINERS AND LABELS REQUIRED.

All patients having possession of any controlled substance, by lawful prescription of practitioner while such controlled substance is lawfully in such person's possession, must keep such controlled substance in the original container in which it was delivered until used in accordance with such prescription, and must not remove the pharmacist's original label identifying the prescription from the original container.

('72 Code, § 961:30) (Ord. 1984-458(A), passed 6-11-84) Penalty, see § 10.99

§ 135.08 POSSESSION OF INJECTION IMPLEMENT.

It is unlawful, except for dealers in surgical instruments, apothecaries, physicians, dentists, veterinarians, nurses, attendants and interns of hospitals, sanitoriums or any other institution in which persons are treated for disability or disease, to at any time have or possess any hypodermic syringe or needle or any instrument adapted for the use of cocaine or narcotic drugs or any dangerous drugs defined in M.S. § 152.01, Subdivision 5, or as defined in 21 USC 321 (Section 201 of the Federal Food, Drug and Cosmetic Act (v)) by subcutaneous injections and which is possessed for that purpose, unless such possession be authorized by the certificate of a physician issued within a period of one year prior to any time of such possession.

('72 Code, § 961:35) (Ord. 1984-458(A), passed 6-11-84) Penalty, see § 10.99

CHAPTER 136: WEAPONS

Section

§ 136.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

DEADLY WEAPONS. This term includes the following:

(1) All firearms;

(2) Bows and arrows when the arrows are pointed tipped;

(3) All instruments used to expel at high velocity any pellets of any kind, including, but not limited to B-B guns and air rifles;

(4) Sling shots;

(5) Sand clubs;

(6) Metal knuckles; and

(7) Daggers, dirks, stilettos, switch blade knife, spring blade knife, push button knife, or figures or discs with sharpened points or edges (commonly known as "throwing stars").

FACSIMILE FIREARMS. This term includes the following:

(1) Any object which is a replica of an actual firearm, which substantially duplicates an actual firearm or which could reasonably be perceived to be an actual firearm, unless:

(a) The entire exterior surface of such object is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple, either singly or as the predominant color in combination with other colors in any pattern, or such object is constructed entirely of transparent or translucent materials which permit unmistakable observation of the object's complete contents; and

(b) Such object has a blaze orange extension that extends at least six millimeters from the muzzle end of the barrel of such object which is as an integral part of the object and is permanently affixed; and

(c) Such object does not have a laser pointer attached to it.

(2) ***FACSIMILE FIREARM*** does not include any actual firearm as otherwise regulated by the terms of this chapter or by the Minnesota Statutes.

('72 Code, § 950:00) (Am. Ord. 1984-457(A), passed 6-11-84; Am. Ord. 2008-1084, passed 2-4-08)

§ 136.02 PROHIBITION.

Except as authorized by law, all discharging, use and possession of deadly weapons within the corporate limits of Brooklyn Park are prohibited except for the possession of bows and arrows at a city-authorized archery target range.

('72 Code, § 950:05) (Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.03 AIMING PROHIBITED.

Except as authorized by law, the aiming of any deadly weapon or facsimile firearm, whether loaded or not, at or toward any human being, building or occupied vehicle is prohibited.

('72 Code, § 950:10) (Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.04 SELLING TO MINORS.

The selling, giving, loaning, or furnishing in any way of any deadly weapon or facsimile firearm to a minor under the age of 18 years without the written consent of the minor's parents or guardian, or of a police officer or magistrate is prohibited.

('72 Code, § 950:15) (Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.05 POSSESSION BY MINORS.

It is unlawful for a minor under the age of 18 years to handle or have in the minor's possession or under the minor's control, except while accompanied by or under the immediate charge of the minor's parent or guardian, any deadly weapon or facsimile firearm.

('72 Code, § 950:20) (Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.06 CONCEALED WEAPONS.

Except for a pistol or antique firearm carried in compliance with M.S. §§ 624.714 and 624.715, the possession by any person other than a law enforcement officer of any deadly weapon or facsimile firearm concealed or furtively carried on the person is prohibited.

('72 Code, § 950:25) (Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.07 USE OF WEAPONS FOR DEFENSE PURPOSES.

Nothing in this section is to be construed to include any firing of a gun or use of other weapons when done in the lawful defense of persons or property or family, or the necessary enforcement of the law.

('72 Code, § 950:30)

§ 136.08 PERMITS.

Subject to reasonable regulation by the Council for the protection of persons and property, the Council may issue special permits to duly organized clubs and their members for shooting or practicing on lands owned or leased by the club or trap shooters shooting on grounds selected for that purpose, or to persons firing salutes over the graves of deceased persons.

('72 Code, § 950:35)

§ 136.09 ISSUANCE OF PERMITS.

The permits provided by the previous sections will be issued at the discretion of the Chief of Police. Appeals may be taken from the Chief's determination to the Council. No permits issued under this section are deemed valid unless they are in writing and in the possession of the person using the permit.

('72 Code, § 950:45) (Am. Ord. 1987-578(A), passed 10-12-87)

§ 136.10 TRANSPORTING FIREARMS AND FACSIMILE FIREARMS.

(A) Except for a pistol or antique firearm carried in compliance with M.S. §§ 624.714 and 624.715, it is unlawful to transport any firearm including a muzzle loading firearm or a facsimile firearm, on the person or in a motor vehicle or airplane, snowmobile, or ATV unless:

(1) The firearm or facsimile firearm and magazines are unloaded and contained in a gun case expressly made for that purpose which is fully enclosed by being zipped, snapped, buckled, tied or otherwise fastened, with no portion of the firearm or facsimile firearm being left exposed; or

(2) The firearm or facsimile firearm is unloaded and in the trunk of a car with the trunk door closed.

(B) It is also unlawful to transport a bow on the person or in a motor vehicle, airplane, snowmobile, or ATV unless it is:

(1) Unstrung;

(2) Completely contained in a case; or

(3) Contained in the trunk of the car with the trunk door closed.

(C) A muzzle loading firearm with a flintlock ignition is fully unloaded if it has no priming powder in any pan and a muzzle loading firearm with percussion ignition is fully unloaded if it has no percussion cap on any nipple.

(D) As used in this section, ***TRANSPORT*** means to carry by any means on the person or in a motor vehicle, airplane, snowmobile, or ATV, except where the act of transportation occurs on property owned or leased by the transporter or the employer of the transporter if such act of transportation is required by said employer.

(E) This section does not apply to law enforcement officers in the performance of their duties.

('72 Code, § 950:50) (Ord. 1986-552(A), passed 12-8-86; Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

§ 136.11 HUNTING PROHIBITED.

(A) It is unlawful, within the city, to hunt or shoot any animals or birds except as follows:

(1) Law enforcement officers working in an official capacity.

(2) For the destruction of diseased, injured, or dangerous birds, animals, or reptiles by persons specifically authorized to do so by the Chief of Police or the City Manager.

(3) Persons authorized by the City Manager or Chief of Police for purposes of protecting the health, safety, or general welfare.

(B) The Council or the Manager, as the case may be, may limit type of animal or bird to be hunted or shot and the manner and means of accomplishing this task.

('72 Code, § 950:55) (Ord. 1990-645(A), passed 2-26-90; Am. Ord. 2008-1084, passed 2-4-08) Penalty, see § 10.99

TITLE XV: LAND USAGE

Chapter

CHAPTER 150: SIGNS

Section

GENERAL PROVISIONS

§ 150.01 SHORT TITLE.

This chapter may hereafter be known and cited as the "Sign Ordinance."

('72 Code, § 356:00) (Ord. 1988-602(A), passed 8-22-88)

§ 150.02 PURPOSE AND INTENT.

(A) This chapter is established to protect and promote the health, safety, general welfare and order within the City of Brooklyn Park through the establishment of a comprehensive and impartial series of standards, regulations and procedures governing the type, numbers, size, structure, location, height, lighting, erection, maintenance, use and/or display of devices, signs or symbols serving as a visual communicative media to persons situated within or upon public right-of-ways or properties.

(B) The provisions of this chapter are intended to establish an opportunity for effective communication, and a sense of concern for visual amenities on the part of those designing, displaying or otherwise utilizing needed communicative media of the types regulated by

this chapter; while at the same time, assuring that the public is not endangered, annoyed or distracted by the unsafe, disorderly, indiscriminate or unnecessary use of such communicative media.

('72 Code, § 356:05) (Ord. 1988-602(A), passed 8-22-88)

§ 150.03 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. The singular number includes the plural and the plural includes the singular. The present tense includes the past and future tenses and the future the present. The word "must" is mandatory and the word "may" is permissive. The masculine gender includes the feminine and neuter genders. Whenever a word or term defined hereinafter appears in the text of this chapter, its meaning is construed as set forth in such definition thereof. All measured distances must be expressed in feet and inches.

ADVERTISEMENT. Displayed information that calls public attention to a business, product, service, political or non-profit organization, idea, or event.

ADMINISTRATOR. The officer charged by the City Manager with the administration and enforcement of this chapter.

ALTERATION. This refers to any alteration to a sign excluding routine maintenance, painting, or change of copy of an existing sign.

AREA IDENTIFICATION SIGN. A sign which identifies a development such as a shopping center consisting of three or more separate business concerns, a singular free-standing commercial or institutional building 50,000 square feet or larger, an industrial building in excess of 100,000 square feet, an industrial area, an office or institutional complex consisting of three or more buildings or any combination of the above. An area identification sign must not contain advertisement, except on a reader board.

AWNING. A temporary roof like structure or cover which projects from the wall of a building or projects over any entrance and can be retracted, folded or collapsed against the face of a supporting building.

BANNER. Refers to temporary sign such as used to announce open houses, grand openings or special announcements or sales.

BENCH SIGN. A sign which is affixed to or painted on a bench, such as at a public transit terminal or stop.

BILLBOARD SIGN. A sign which is erected and used for the purpose of selling or leasing advertising space or for the purpose of selling goods and/or services other than those offered on the premises.

BUILDING. Any structure having a roof which may provide shelter or enclosure for persons, animals or chattel, and when the structure is divided by party walls without openings, each portion of such building so separated is deemed a separate building.

BUILDING FACADE. That area of any exterior elevation of a building extending from grade to the top of the exterior wall and the entire width of the building elevation, including parapets, awnings, canopies, mansards or other appendages or architectural treatments to the wall. The facade does not include flat roof sections of multi-level buildings nor the shingled faces of hip roofs or gable roofs.

CANOPY/WALKWAY. A permanent roof-like structure or cover which projects from the wall of a building, or projects over any entrance or walkway.

CANOPY/VEHICULAR SERVICE. A permanent roof-like structure, either attached or detached from a permitted building, designed to provide cover for off-street vehicle service areas, (such as gasoline station pump islands, drive-in establishments, truck loading berths, and the like).

CONSTRUCTION SIGN. A sign placed at a construction site identifying the project or the name of the architect, engineer, contractor, developer, financier or other involved parties.

DIRECTIONAL SIGNS. A sign which bears only directional arrows or information on location plus the address and/or name of a business, institution, or other use activity, provided the primary message and purpose is to provide directional information.

DISTRICT. Refers to a specific zoning district as defined in the Brooklyn Park Zoning Ordinance, Chapter 152.

DWELLING. A building of one or more portions thereof occupied or intended to be occupied for residential purposes; but not including rooms in motels, hotels, nursing hones, boarding houses, trailers, tents, cabins or trailer coaches.

DWELLING UNIT. A single-family dwelling.

EVENT. For the purposes of this chapter, an event is defined as an organized function, which occurs on two consecutive weekends or over a period of no more than ten consecutive days, that serves to advertise and/or promote a non-profit agency or organization as defined by the State of Minnesota. Section 150.06(A)(1) regulates those events that use banners or mobile reader boards.

FEATHER FLAG. A free-standing, temporary sign constructed of a singular vertical pole, tube, or post supporting one edge of a single sheet of weather resistant cloth, vinyl, or similar material printed with advertising, graphics, or other messages on each opposing side, incorporating movement only as provided by surrounding winds or other unassisted ambient air movement.

FLASHING SIGN. A sign which contains rotating, flashing, or intermittent lights, animation, or exhibits noticeable changes in color, intensity, texture, shape, pattern or light intensity.

FREE-STANDING SIGN. Any stationary, self-supporting sign not affixed to any other structure and supported by a pole(s). A reader board or electronic message center may be attached to the free-standing sign structure, but the reader board must not exceed 30% of the area containing the sign copy. The reader board must be included in calculating the allowable sign square foot area as required in the individual district.

GOVERNMENTAL SIGN. A sign which, is erected by a governmental unit for the purpose of identification, direction, and/or guiding traffic.

GRADE. The main elevation of curb along public street frontage closest to the sign to which reference is made, or center line of street-if no curb is available.

HOME OCCUPATION SIGN. A sign directing attention to a home occupation as defined in the city's zoning ordinance, Chapter 152.

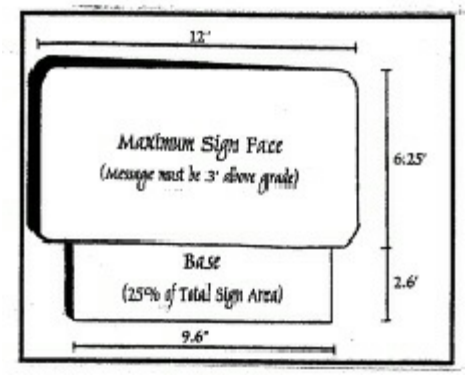
IDENTIFICATION SIGN (NAME PLATE). Any sign which states the name and/or address of the business or occupant of the lot or building where the sign is placed or may be a directory listing the names, addresses and/or businesses of occupants. ***IDENTIFICATION SIGNS*** must contain no advertisement.

ILLUMINATED SIGN. Any sign which is designed to be and/or is lighted by an artificial light source either directed upon it or illuminated from an interior source. All illuminated signs must have light sources shielded to confine direct illumination to the face area of the sign.

INSTITUTIONAL SIGN. A sign and/or reader board which identifies the name and other characteristics of an institutional use located within any zoning district and allowed by zoning code. Institutional signs must not contain advertisement (examples: churches, schools, sanitariums, hospitals, government buildings, nursing homes).

INTEGRAL SIGN. A sign carrying the name of a building, its date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type of construction and made an integral part of the building walls.

MONUMENT SIGN. A sign which is attached to or supported by a monument structure which bears entirely on the ground, extending horizontally for a minimum of 80% of the entire length of the sign face. The sign base must be constructed of any one or combination of the following materials: brick, stone, decorative masonry, plastic, aluminum, colored metals, or decay resistive wood. The base and supporting material must constitute at least 25% of the total allowable sign square footage. A reader board or electronic message center may be attached to the monument sign but must not exceed 30% of the area. The sign copy, reader board or message must have a minimum clearance of three feet above grade. The area containing sign copy, including reader board, and the area of the monument structure itself must be combined for determining the total square footage and height. A sign attached to a retaining wall is considered to be a monument sign provided the message or copy does not exceed the allowable sign area as specified for the applicable zoning district, and all other provisions for a monument sign are met.



An example of a 100 square foot monument sign.

MOTION SIGN. Any sign which revolves, rotates, has any moving parts or gives the illusion of motion, electronically or otherwise.

NON-CONFORMING SIGN. A sign which was lawfully constructed prior to the time of the passage of this chapter or amendment thereto, but which does not conform with the regulations of this chapter.

NON-PROFIT ORGANIZATION. An incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, a congressionally chartered veterans' organization, or religious institution. For the purposes of this chapter, this definition includes the governments of the City of Brooklyn Park, Hennepin County, State of Minnesota, United States of America, and any school district within the city limits.

OFF-SITE DIRECTIONAL SIGN. A sign that is located on the same pole and beneath an existing street name sign for the purpose of providing directional information for a public or institutional use that is located on a local street. The City Engineer may determine whether a sign or signs are warranted to direct traffic in this manner on a case by case basis. No more than one off-site directional sign may be located on a single pole, the sign must have same color, size and font as the accompanying street name sign and must contain only the name of the use and a directional arrow and must be constructed and maintained by the city at the expense of the benefitting property.

PEDESTRIAN SIGN. A temporary sign, which is constructed of durable materials and is designed to be readily moved from one location to another (ex. sandwich board sign or any item containing a message). For purposes of this chapter, any sign mounted to, or conveyed by means of, a vehicle shall not be considered a pedestrian sign.

PENNANT. Attention getting devices (such as streamers) constructed of paper, cloth, plastic or similar materials, (excluding banners and flags).

PERMANENT SIGN. Any sign which is not a temporary sign.

PORTABLE SIGN. A temporary sign and/or reader board so designed as to be movable from one location to another and which is not permanently attached to the ground, or any permanent structure.

PRODUCT IDENTIFICATION SIGNS. A sign that is not necessary to identify a business and identifies a product or service either sold on or off the premises on which the sign is located.

PROJECTING SIGN. A sign, other than a wall sign, which is affixed to a building and which has sign faces extending perpendicular from the building wall.

READER BOARD (ELECTRONIC MESSAGE CENTER). That portion of the sign used for removable or electronically changeable graphics, letters, and/or numbers to convey messages.

REAL ESTATE SIGN. A business sign placed upon a property advertising that particular property for sale, rent or lease.

RESIDENTIAL DEVELOPMENT SIGN. A sign that identifies the name of a neighborhood, a residential subdivision, or a multiple residential complex.

ROOF SIGN. Any sign which is erected, constructed or attached wholly or in part upon or above the roof of a building.

RUMMAGE OR GARAGE SALE. The infrequent, temporary display and sale of used personal property by a tenant or owner on the tenant's or owner's residential premises.

SEARCHLIGHT. An apparatus containing a source of light and a reflector that projects the light produced in a concentrated, far-reaching beam for the purpose of advertisement.

SETBACK. The minimum horizontal distance from the closest part of a sign to the property line, or public street easement or right-of-way.

SIGN. Any structure, device, advertisement, or visual representation intended to advertise, identify, or communicate information, or attract the attention of the public for any purpose; and without prejudice to the generality of the foregoing includes: any symbols, letters, figures, illustrations, or wall graphics painted or otherwise affixed to a building or structure.

SIGN AREA. That area measured within the perimeter lines of the sign which bears the advertisement; or in the case of messages, figures, or symbols, including those attached directly to any part of a building. That area which is included in the smallest rectangle which can be made to circumscribe the message, figure, or symbol displayed for the purpose of advertisement. The specified maximum sign area for a free-standing or monument sign refers to a single facing and not to the aggregate area of both faces. The sign area for a monument sign includes the sign structure.

SIGN, MAXIMUM HEIGHT OF. The vertical distance measured from grade or other reference elevation as herein specified to the upper limit of such a sign.

SIGN, MINIMUM HEIGHT OF. The vertical distance measured from grade or other reference elevation as herein specified to the lower limit of such sign.

SIGN STRUCTURE. The base, supports, uprights, bracing and framework for a sign including the sign area.

STREET. Refers to a public highway, road, or thoroughfare which affords the principal means of access to adjacent lots.

STREET FRONTAGE. The linear length in feet of the property line adjacent to public street(s). An interior lot has one street frontage and a corner lot has two street frontages.

TEMPORARY SIGN. Any sign which is erected or displayed with or without a permit for a specified period of time (such as banners, portable signs, searchlights, window signs, and the like).

UNLAWFUL SIGN. A sign which exists prior to or after the passage of this chapter or amendments thereto, which does not conform with the regulations of this chapter and is not an existing legal, or is not a legal nonconforming sign, or is not a sign erected with a sign permit, is an unlawful sign.

WALL. The building facade area that defines the front of the building. The front is the continuous line of a building that connects side wall to side wall and faces one public right-of-way. For a multi-tenant building on a corner lot, the front is the continuous line of a building which faces either a public right-of-way or a private road in a planned unit development.

WALL SIGN. A sign with permanent lettering which is affixed to the exterior wall of a building and has a sign face which is parallel to the building wall. A wall sign must not project more than 12 inches from the surface to which it is attached, nor may it extend beyond the top of the building wall.

WALL GRAPHICS. A graphic design or decorative mural not intended for identification or advertising purposes, which is painted directly on or affixed to an exterior wall surface.

WINDOW SIGN. A temporary sign affixed to the interior of a window in view of the general public. This does not include merchandise that is for sale and on display.

('72 Code, §§ 356:10 - 356:15) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 1994-766, passed - -94; Am. Ord. 1999-900, passed 5-24-99; Am. Ord. 1999-914, passed - -99; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2000-939, passed 11-13-00; Am. Ord. 2003-1002, passed 8-25-03; Am. Ord. 2004-1026, passed 12-13-04; Am. Ord. 2012-1152, passed 10-22-12; Am. Ord. 2014-1165, passed 2-3-14; Am. Ord. 2014-1186, passed 12-15-14)

§ 150.04 GENERAL PROVISIONS APPLICABLE TO ALL ZONING DISTRICTS.

(A) Nothing in this chapter will be interpreted as authorizing the erection or construction of any sign not permissible under the zoning or building ordinances of the city.

(B) All electrical signs, temporary or permanent, are subject to the State Electrical Code and approval of the Electrical Inspector.

(C) No sign other than bench signs at public transit stops and governmental traffic safety or roadway information signs and off-site directional signs as defined in § 150.03 may be permanently or temporarily erected within any street right-of-way or upon any public easement.

(D) Directional signs are permitted in all districts provided the directional signs are located on the property referred to by the sign or within a planned unit development. The area of such signs must not exceed ten square feet per sign face for a single tenant building or 20 square feet per sign face for a multiple tenant building or a multi-building complex. Such signs must not have more than two sign faces. Maximum sign height for free-standing or monument-type directional signs is six feet above grade.

(E) It is unlawful to park any vehicle or trailer on a public right-of-way or public property or on private property so as to be visible from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of directing people to a business or activity located on the same or nearby property or any other premises.

(F) Businesses that utilize permanent, legal outdoor sales, (such as lumber yards, nurseries, and the like) are allowed generic product identification signs for customer convenience, and to assist in traffic movement. These signs must not exceed 36 square feet in area, nor exceed eight feet in height, and may be illuminated. These signs are allowed for orientation information purposes only and must not be visible from public streets. These product identification signs must be setback 100 feet or more from all public streets.

(G) If a free-standing sign or monument sign is constructed so that the faces are not constructed so as to be back to back, the total area of all sides added together must not exceed the maximum allowable sign area for the district.

(H) Architectural building extensions such as awnings or canopies, other than vehicular service canopies, primarily built as shelter for entrances or for aesthetic purposes, are allowed to display signage. These signs are considered as wall signs for the purpose of determination of the maximum allowable sign area.

(I) Vehicular service canopy signs are limited to a business logo and/or graphic design not to exceed ten percent of each canopy face area or ten square feet on each canopy face, whichever is smaller. Service station canopy signs are restricted to two faces of the canopy and must not be located above or below the canopy area.

(J) Service stations may advertise gasoline prices on reader boards attached to a permitted free-standing sign or attached to canopy supports. If attached to the canopy supports, these signs must be no larger than 15 square feet in area. In no case may a free-standing sign be constructed for the sole purpose of advertising prices. Service stations may have gas pump topper signs advertising products for sale on the premises, not to exceed two square feet per gas pump.

(K) No sign except bench signs and billboards, may in its entirety, separately advertise a product, commodity, service, or contain other miscellaneous language that is not directly related to the business name, except as allowed by § 150.06(B)(5)(h).

(L) A product identification sign may be integrated into a permitted free-standing, monument or wall business sign and will be included as part of the maximum allowable sign area. Product identification sign area must not exceed ten percent of the maximum allowable sign area.

(M) Buildings, premises or lots are not allowed to have pennants, pinwheels, or other attention attracting devices, or temporary signs except in, accordance with § 150.06 of this chapter.

(N) One flagpole may be erected for each 100 feet of street frontage, not to exceed a total of three flagpoles. Height of the poles must not exceed the building height regulations, as specified by the zoning ordinance for the district where the poles are located, and flag length must not exceed 25% of the pole height, and no more than two flags per pole are permitted.

(O) It is unlawful for a sign permitted by this chapter, by reason of its location, color intensity, to create hazard to the safe, efficient movement of vehicular or pedestrian traffic. A private sign must not contain alarming words which might be construed as traffic controls, such as "stop," "caution," "warning," and the like, unless such sign is intended to direct traffic on the premises.

(P) A sign must not contain any indecent or offensive picture or written matter.

(Q) State and federal government agencies and their political subdivisions are exempt from the provisions of the sign ordinance except for setback requirements.

(R) All sign permits for multiple tenant buildings require the signature of the property owner or the property owner's agent.

('72 Code, § 356:20) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-939, passed 11-13-00; Am. Ord. 2014-1165, passed 2-3-14) Penalty, see § 10.99

§ 150.05 PROHIBITED SIGNS.

The following signs are specifically prohibited in all districts:

(A) Motion signs - exempted are temporary search lights and electronic motion signs which only display time and/or temperature information or have a message that does not change more frequently than once every two minutes.

(B) Flashing signs except electronic motion signs as exempted above.

(C) Roof signs - signs installed above the building facade.

(D) Projecting signs.

(E) Signs which have more than two sign faces.

(F) Signs which are attached to trees, fences, utility poles or other such permanent supports, not specifically intended as sign structures.

(G) Signs painted directly on building walls. Exempted are non-commercial non-lettered wall graphics in accordance with § 150.03 of this chapter.

(H) Wall signs are not permitted on any building wall facing an abutting residential property or properties, unless separated by a city street or highway right-of-way.

(I) Signs affixed to the exterior side of windows, except addresses and other minor directional information.

(J) Billboards in the T.H. 610 Corridor as delineated in the T.H. 610 Corridor Plan.

(K) Portable reader board signs unless specifically allowed in other sections of this code.

('72 Code, § 356:25) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 1994-766, passed 9-12-94; Am. Ord. 1999-900, passed 5-24-99; Am. Ord. 2010-1121, passed 12-6-10) Penalty, see § 10.99

§ 150.06 TEMPORARY SIGNS.

(A) *Multi-family apartment, commercial, industrial, organization, and institutional users in all zoning districts.* The following sections concern temporary signs in all zoning districts. The signs are regulated according to the requirements set forth below:

(1) *Temporary banner advertisement signs.* Temporary advertisement signs in the form of durable, weather resistant banners, may be erected with a sign permit, provided:

(a) A temporary sign permit is necessary for all signs identified in this section.

(b) Minimum setbacks: All temporary advertisement signs in the form of banners and feather flags must be set back at least 10 feet from all property lines and may in no case be permitted within the 30 foot clear-view triangle at public or private streets or driveway intersections.

(c) The total area of all temporary signs in the form of banners must not exceed 200 square feet.

(d) Banners are allowed to be displayed on existing fences, accessory buildings, and principle building facades providing they meet the setback requirements.

(e) In a multi-tenant structure the banner must not exceed the width of the front of the space to be occupied or 200 square feet, whichever is less.

(f) Businesses possessing a valid and current temporary sign permit may display for that allotted time period (in addition to the permitted banner), up to three feather flags for advertising purposes. Feather flags must be less than or equal to 15 feet in height, displayed on the property where the permit holding business is located, may not impede vehicle or pedestrian traffic, and are not allowed to be displayed in a public right-of-way or other prohibited areas.

(2) *Permit required.* Each business concern or organization is allowed a maximum of three permits in a calendar year, except temporary non-profit organization events which are allowed an unlimited number of permits. Each permit for a banner will be for 30

consecutive days. Permit fee is set by the City Council. No temporary sign permit will be issued to any business, institution, or organization found guilty of violating the provisions of the temporary sign code more than once in a calendar year for the period of one year from the second occurrence.

(a) *Exception - grand opening banner.* A business must receive a one-time permit at no cost to place a "grand opening" banner for 60 consecutive days from the opening date. The banner must follow size and setbacks described in the section above. This permit will not count towards the three allotted annual permits.

(3) *Window signs.* Window sign area must not exceed 25% of the total area of the window(s) located on the wall face in which it is displayed. No permit is required for signs located on the inside of windows or for interior store displays.

(4) *Flashing or rotating signs prohibited.* Flashing or rotating signs or lights are not permitted on temporary signs. However, search lights may be used on site for four days for the calendar year.

(5) *Itinerant produce sales signs.* Vendors who have received permits to operate at the Brooklyn Park Farmers' Market, are allowed one sign without a permit. That sign must be no larger than 16 square feet in size and be located no more than five feet of the merchant's stand, table, vehicle, or the like, and can only be displayed the day and time of the sale. This sign limitation does not include small price signs, less than one-half square foot in size, located on or near the produce. The signs must be removed from the site at the end of each sale day.

(6) *Pedestrian signs.* Each business is allowed one pedestrian sign not to exceed 10 square feet on each of two sides displayed outside only during regular business hours. Pedestrian signs must be located within 20 feet of a customer entrance to the business, but must not block pedestrian walkways. Pedestrian signs must be located on the same parcel as the business and must not be located within the public right-of-way.

(B) *All zoning districts.* The following sections concern temporary campaign signs, temporary construction signs, temporary real estate signs, temporary non-profit organization event signs, and temporary residential garage and/or rummage sale signs in all zoning districts, and the signs are regulated according to the requirements set forth below:

(1) *Temporary campaign signs.* Temporary campaign signs posted by a candidate for public office or by a person or group promoting a political issue or a political candidate may be erected subject to the following:

(a) Signs must not exceed sizes authorized by state statute for state general elections.

(b) Pursuant to M.S. § 211B.045, campaign signs may be posted 46 days before the state primary in a state general election year until ten days following the state general election.

(c) Minimum setbacks: There is no setback requirement; however, these signs must not be erected on the public right-of-way, on public property or in the public street intersection 30 foot clear-view triangle.

(d) Maximum height of signs: No temporary campaign sign may exceed 12 feet above grade.

(2) *Temporary construction sign.* One temporary identification sign may be installed upon a construction site denoting the names of involved parties provided:

(a) Sign area must not exceed 100 square feet.

(b) Sign must be removed within two years after issuance of first building permit or upon issuance of a certificate of occupancy, whichever is sooner.

(c) Minimum setbacks: These signs must comply with setback requirements of subdivision (B)(1)(c) of this section. Signs must be erected only on the property where work is being done.

(d) Maximum height of signs: No temporary construction sign may exceed 12 feet above grade.

(3) *Temporary real estate signs.*

(a) *Free-standing sign.* A temporary free-standing sign for the purpose of selling or leasing individual lots, parcels, homes or buildings may be erected provided:

1. Sign area must not exceed six square feet for residential property and 20 square feet for non-residential property.

2. Sign must be removed within seven days following the closing of a sale or lease of the property.

3. Minimum setbacks: There is no setback requirement; however, these signs must not be erected on the public right-of-way

nor in the public street intersection 30 foot clear- view triangle. Sign must be erected only on the property being sold or leased.

4. Maximum height of signs: No temporary freestanding real estate sign may exceed eight feet above grade.

5. Banners, streamers, pennants, balloons, directional signs, and the like, may be erected for two 21-day periods per year to coincide with the spring "Preview of Homes" and the fall "Parade of Homes."

6. Temporary open house and/or directional signs: Temporary open house and/or directional signs may be placed in public view no earlier than 9:00 a.m. on the actual day of the open house and must be removed no later than 9:00 p.m. on the same day. Only one sign per intersection is allowed for each open house. Placement of open house directional signs should not block pedestrian or bicycle pathways or sidewalks. Signs must not be placed within the 30 foot clear view triangle at public street intersections. Open house directional signs may not be attached to federal, state, county or city sign posts. The signs may not be placed on center medians or street islands or within four feet of the roadway surface.

(b) *Area identification sign.* A temporary area identification sign for the sale or lease of residential projects of two or more dwelling units or lots, and for non-residential projects, may be erected provided:

1. Sign area must not exceed 100 square feet.

2. Such sign must be removed when the project is 80% sold or leased.

3. Minimum setbacks: All temporary real estate area identification signs must be set back at least 25 feet from all property lines. Sign must be erected only on the property being sold or leased.

4. Maximum height of sign: No temporary real estate area identification sign may exceed eight feet above grade.

(4) *Temporary residential garage and/or rummage sale signs.*

(a) Sign area must not exceed four square feet.

(b) Signs must be erected for no longer than four days and must be removed by the owner immediately following this time. Signs which remain in place for more than four days are deemed litter. The beginning and end date of sale, and address of the sale must be prominently displayed on every sign erected.

(c) Minimum setbacks: There is no setback requirement; however, these signs must not be erected in the public right-of-way, on public property, or in the public street intersection 30 foot clear-view triangle. Signs may be erected on private properties other than the property where the sale is conducted.

(d) Maximum height of signs: No temporary residential garage and/or rummage sale sign may exceed six feet above grade.

(5) *Temporary non-profit organization event signs.*

(a) Signs must not exceed eight square feet per sign face.

(b) An unlimited number of signs are allowed per event, but must be located as follows:

1. No more than one sign per event may be located on a single parcel, and

2. No more than four signs per event may be located in a single street intersection.

(c) A map or list of addresses designating the specific sites of each sign must be kept by the applicant.

(d) Signs must not be posted in excess of 15 days prior to the event and must be removed no later than two days following the final date of the event. The promoting organization, location and date(s) of the event must be prominently placed on each sign.

(e) Minimum setbacks: There is no setback requirement; however, these signs must not be erected on the public right-of-way, on public property, or in the public street intersection 30 foot clear-view triangle.

(f) Maximum height of signs: A temporary non-profit organizational event sign must not exceed six feet in height above grade.

(g) A portable reader board must not be used off the premises from which the event is being held nor may this type of advertising precede or exceed the actual dates of the event. A portable reader board must not be used on public property. An on-site reader board must not exceed 32 square feet. These signs must be set back 15 feet from all property lines but not within the 30 foot clear-view triangle of entrances or public street intersections.

(h) A non-profit organization may display messages directly related to their organization on the reader board of any lawful sign

with the permission of the sign owner.

(6) *Temporary roadside agricultural products advertisement signs.* Temporary advertisement signs may be erected with a sign permit, provided:

(a) Signs advertise agricultural products grown on the property in compliance with this chapter of the City Code.

(b) Maximum size: Signs may not exceed 16 square feet in area per sign face. No more than three signs are allowed, per property, and only two of which may be permitted off the site where the agricultural products is grown. For all off-site signs, written permission from the property owner of the proposed sign location shall be submitted with the sign application.

(c) Signs are allowed to be posted for a period of time not to exceed three months. The specific time period requested must be specified in the permit application.

(d) Minimum setbacks: There is no setback requirement; however, these signs may not be erected on the public right-of-way, on public property, or in the clear view triangle as defined in this chapter of the City Code.

(e) Maximum height of signs: No temporary roadside agricultural products advertisement sign may exceed eight feet in height above grade.

('72 Code, § 356.35) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1990-657(A), passed 8-27-90; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 1997-848, passed 6-9-97; Am. Ord. 2000-933, passed 10-9-00; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2004-1026, passed 12-13-04; Am. Ord. 2012-1147, passed 8-20-12; Am. Ord. 2012-1152, passed 10-22-12; Am. Ord. 2014-1165, passed 2-3-14) Penalty, see § 10.99

§ 150.07 NON-CONFORMING SIGNS.

(A) Any lawfully constructed non-conforming or any legal sign existing upon the effective date of this chapter may be maintained and continued at the size and in the manner of operation existing upon such date except as hereinafter specified.

(B) Upon adoption of this chapter, a non-conforming sign must not be:

(1) Changed to another non-conforming sign.

(2) Structurally altered or moved except to bring such nonconforming sign into conformance with this chapter.

(3) Expanded or enlarged.

(4) Repaired or otherwise rehabilitated after damage or deterioration of more than 50%, except to bring into conformance with this chapter.

(C) Notwithstanding the foregoing divisions of this section, all signs which are made non-conforming by this sign ordinance, must be brought into conformance, on a sign-by-sign basis, at the time that a sign face or copy is changed or altered except for routine maintenance as required by this chapter. Billboard signs must be brought into conformance at the time that the main structure is removed and must follow the provisions of § 150.29(F).

(D) Temporary signs as provided in § 150.06 are not entitled to non-conforming status. Such signs must be brought into compliance with § 150.06 as directed by the sign enforcement office, or it may be summarily removed from display by the enforcement officer.

('72 Code, § 356:40) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92) Penalty, see § 10.99

§ 150.08 VARIANCES.

(A) Any request for a variance to the sign ordinance must follow the same procedure as outlined in the zoning code.

(B) (1) In considering all variance requests and in taking subsequent action, the Planning Commission and the City Council must make a finding showing that all of the following conditions exist:

(a) There are special conditions or circumstances affecting the property such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of the applicant's land.

(b) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

(c) The granting of the variance will not be detrimental to the public welfare or injurious to the other property in the area in which the property is situated and will not have an adverse effect upon traffic or traffic safety.

(2) In making an application for a variance, the petitioner must state in writing why the petitioner believes the above conditions exist. Upon granting a variance, the Council may attach those conditions it deems desirable or necessary to protect the public interest.

('72 Code, § 356.45) (Ord. 1988-602(A), passed 8-22-88)

§ 150.09 SIGN APPLICATION.

(A) *Permits required.* Except as specifically provided by this chapter, it is unlawful for any person to erect, alter, or relocate within the city any sign, without first obtaining a permit(s) from the Sign Ordinance Administrator and making payment of the fee required. Application for permits must be made upon application forms provided by the City of Brooklyn Park and must be accompanied by:

(1) A site plan drawn to scale based on and accompanied by a certificate of survey, or on a certificate of survey, showing the relation of the sign to the nearest buildings, private and public streets, right-of-ways and property lines.

(2) Sign plans, specifications and methods of construction.

(3) A copy of structural calculations and details showing the structure is designed for live and dead loads including wind velocity in the amount required by all ordinances of the city. Electrical permits will be required by the State Board of Electricity.

(B) *Permit issued if application in order.* It is the duty of the Sign Ordinance Administrator, upon the filing of the application for a permit, to examine such plans and specifications and other data, and the premises upon which the sign is proposed to be erected, and if it appears that the proposed structure is in compliance with all other laws and ordinances of Brooklyn Park, the Administrator must then issue the permit. If the work authorized under a permit has not been completed within 90 days after the date of issuance, the permit will become null and void.

(C) *Permit fees.* Every applicant, before being granted a permit hereunder, must pay to the city the permit fee for each sign regulated by this code in an amount as established by the fee resolution, set forth in the Appendix to this code.

(D) *Permit revocable at any time.* All rights and privileges acquired by obtaining a permit under the provisions of this chapter or any amendment thereto are mere licenses, revocable for cause at any time by the Council, and all such permits must contain this provision.

('72 Code, § 356.50) (Ord. 1988-602(A), passed 8-22-88)

§ 150.10 BOND AND LICENSE.

(A) It is unlawful to engage in the business of erecting signs, and no person is entitled to a permit to erect a sign under this chapter unless licensed to do so by the City of Brooklyn Park, except as provided in division (B) of this section. Such license may be granted on written application accompanied by an annual license fee in the amount set by the Council, to the Sign Ordinance Administrator in such form as the Sign Administrator prescribes. The license may be terminated by the Council at any time for cause. No license will take effect until the licensee files with the city a bond with corporate surety in a form approved by the City Attorney in the penal sum of $2,000, conditioned that the licensee will pay all permit fees required under this chapter, pay any fines imposed upon the licensee for violation thereof, will conform to all of the provisions of this chapter, and will indemnify and hold the city, its officers and agents harmless from any damage or claim resulting from or related to the erection or maintenance of any sign in the city by the licenses.

(B) Bonding and licensing requirements are not required of a property owner(s) erecting signs on their own property. All other provisions of this chapter apply.

('72 Code, § 356.55) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92) Penalty, see § 10.99

§ 150.11 CONSTRUCTION STANDARDS.

The design and construction standards for signs and sign structures as set forth in Chapter 4 of the 1997 Edition of the Uniform Sign Code are adopted by reference, a copy of which is on file and on record with the City Clerk.

('72 Code, § 356.60) (Ord. 1988-602(A), passed 8-22-88) Penalty, see § 10.99

§ 150.12 PERMIT AND FEE EXEMPTIONS.

The exemptions permitted by this section apply only to the requirement of a permit and/or fee, and are not construed as relieving the installer of the sign, or the owner of the property upon which the sign is located, from conforming with the other provisions of this chapter:

(A) Temporary signs erected by non-profit organizations must obtain a permit but are exempted from any fee.

(B) No permit or fee is required for the following:

(1) Temporary signs displayed in accordance with § 150.06(A)(2), (B)(1), (B)(2), (B)(3), (B)(4) and (B)(5).

(2) Integral signs.

(3) Residential identification (name plate) signs.

(4) Directional signs.

(5) Signs which are located completely on the interior of a building and not visible from the outside of the building.

('72 Code, § 356.65) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92)

§ 150.13 ENFORCEMENT.

(A) *Unsafe, non-maintained and unlawful signs.*

(1) If the Sign Ordinance Administrator finds that any permanent sign regulated herein is unsafe or insecure, or adversely affects the health safety and general welfare of the public, or has been constructed or erected or is being maintained in violation of the provisions of this chapter; the administrator must give written notice by mail to the permittee thereof.

(2) If the permittee fails to remove or alter the structure so as to comply with the standards herein set forth within 14 days after the mailing notice, the sign or other advertising structure may be removed or altered at the expense of the permittee or owner of the property upon which it is located or legal action may be taken to force compliance with this chapter. The Sign ordinance Administrator must refuse to approve and the City of Brooklyn Park must refuse to issue a permit to any permittee or owner who refuses to pay costs so assessed.

(3) The Sign Ordinance Administrator may cause any sign or other advertising structure which is a safety hazard to persons to be removed summarily and without notice. The Sign Ordinance Administrator may cause any temporary sign erected not in conformance with the sign ordinance to be removed summarily and without notice or legal action may be taken to force compliance with this chapter.

(B) *Painting required.* The owner of any sign as defined and regulated by this chapter is required to have the sign and sign structure properly painted upon order of the Sign Ordinance Administrator. It is the intent of this provision that the sign appearance does not create a blighting influence upon the neighborhood where the sign is located.

(C) *Wood supports to be decay resistive.* All posts, anchors and bracing of wood must be decay resistive or approved wood preventative treated to protect them from physical or aesthetic deterioration.

(D) *Premises to be kept free of weeds, and the like.* All the premises surrounding signs must be maintained by the owner thereof in a clean, sanitary and inoffensive manner and free and clear of all obnoxious substances, rubbish and weeds.

('72 Code, § 356.70) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 1997-848, passed 6-9-97) Penalty, see § 10.99

§ 150.14 VIOLATIONS.

(A) If the Sign Ordinance Administrator finds any permanent sign in violation of the terms of this chapter, a written notice will be issued to the owner, and/or possessor (tenant in possession, operator or manager of the premises on which the sign is located), specifying the violation and allowing the time period specified in § 150.13(A) above in which to correct or remove the violation. After the expiration of the time period specified by written notice, if the violation is not corrected or discontinued, the owner and/or possessor of the property will be guilty of a misdemeanor, and each day of violation after the initial time period as specified by written notice constitutes a separate offense.

(B) It is unlawful to display any temporary sign in violation of the terms of this chapter. The owner, and or possessor (tenant in possession, operator, or manager of the premises on which the sign is located) of the property is guilty of a misdemeanor and each day of the violation constitutes a separate offense.

('72 Code, § 356.75) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1997-848, passed 6-9-97) Penalty, see § 10.99

§ 150.15 RIGHT OF APPEAL.

When it is alleged by any person to whom a compliance order is directed that such compliance order is based upon erroneous interpretation of this chapter, or upon a misstatement or mistake of fact, the person may appeal the compliance order to a Board of Appeals and Adjustments as established in the zoning code portion of the city code. The Board as an advisory body must forward their recommendation to the City Council. Such appeals must be in writing, must specify the grounds for the appeal, must be accompanied by a filing fee as designated by the City Council in cash or cashier's check, and must be filed with the compliance official within five business days after service of the compliance order. The filing of an appeal stays all proceedings in furtherance of the action appealed unless such a stay would cause imminent peril to life, health or property.

('72 Code, § 356.76) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92)

DISTRICT REGULATIONS

§ 150.25 R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4 AND R-4A RESIDENTIAL DISTRICTS AND AREAS GUIDED FOR LOW- AND MEDIUM-DENSITY RESIDENTIAL IN THE PLANNED COMMUNITY DEVELOPMENT DISTRICT AND PLANNED UNIT DEVELOPMENT DISTRICT.

The following provisions concern signs in the R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4 and R-4A Residential Districts and area guided for low- and medium-density residential in the Planned Community Development District and Planned Unit Development District, and said signs are regulated according to the requirements set forth below:

(A) *Identification signs (name plate).* One free-standing or wall sign/name plate per dwelling unit, not greater than two square feet in area, indicating the name and/or address of the occupant. A sign must not be constructed so as to have more than two surfaces.

(B) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs, are allowed only one monument sign per street frontage. Such sign must not exceed 60 square feet in area.

(C) *Residential development signs.* These signs shall be reviewed and approved as part of a preliminary plat, site plan review, conditional use permit, or development plan application. Sign area shall be determined by the text copy area only and be limited to 60 square feet per structure face.

(D) *Home occupation signs.* One non-illuminated sign with a maximum square footage of two feet for each dwelling unit wherein a permitted home occupation exists.

(E) *Minimum setbacks.* A sign must not be erected in the public right-of-way. For divisions (A) and (B) of this section, signs must be set back at least 15 feet from front property lines, at least ten feet from side and rear property lines and at least 15 feet from the property lines of corner lots. For division (C) signs, no setback is required. For division (D) of this section, signs must be set back at least 20 feet from front property lines. All signs must allow for an unobstructed view of traffic at intersections of streets or driveways.

(F) *Maximum height of signs.* For signs described in divisions (A) and (D) of this section, no sign may exceed six feet above grade. For signs described in divisions (B) and (C) of this section, no sign may exceed ten feet above grade.

(G) *Residential development signs.* Signs must be constructed of durable materials. Residential development signs may be placed

in median islands, roundabouts, or cul-de-sac islands provided that the island is a separate platted lot privately owned and maintained by a homeowners association, management company, or the like, and approved through the preliminary plat, site plan review, or conditional use permit application.

('72 Code, § 356.30(1)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2003-1002, passed 8-25-03) Penalty, see § 10.99

§ 150.26 R-5, R-6 AND R-7 MULTIPLE RESIDENTIAL DISTRICTS AND AREAS GUIDED FOR HIGH-DENSITY RESIDENTIAL IN THE PLANNED COMMUNITY DEVELOPMENT DISTRICT AND PLANNED UNIT DEVELOPMENT DISTRICT.

The following sections concern signs in the R-5, R-6, and R-7 Multiple Residential Districts and areas guided for high-density residential development in the Planned Community Development District and Planned Unit Development District, and said signs are regulated according to the requirements set forth below:

(A) *Identification signs (name plate).* One wall sign/name plate per institution or multiple residential building, not to exceed six square feet in area, or one wall sign/name plate per dwelling unit where separate entrances occur, not to exceed two square feet in area.

(B) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs, are allowed only one monument sign per street frontage, not to exceed 60 square feet in area.

(C) *Residential development signs.* These signs shall be reviewed and approved as part of a preliminary plat, site plan review, conditional use permit, or development plan application. Sign area shall be determined by the text copy area only and be limited to 60 square feet per structure face.

(D) *Minimum setbacks.* For division (B) of this section, monument signs must be set back at least 15 feet from front property lines and at least ten feet from side and rear property lines. On corner lots, all monument signs must be set back at least 15 feet from front and side corner property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections. All signs must allow for an unobstructed view of traffic at intersections of streets or driveways.

(E) *Maximum height of signs.* For division (B) of this section, no sign may exceed eight feet above grade. For division (C) of this section, no sign may exceed ten feet above grade.

(F) *Residential development signs.* Signs must be constructed of durable materials. Residential development signs may be placed in median islands, roundabouts, or cul-de-sac islands provided that the island is a separate platted lot privately owned and maintained by a homeowners association, management company, or the like, and approved through the preliminary plat, site plan review, or conditional use permit application.

('72 Code, § 356.30(2)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-69, passed 5-11-92; Am. Ord. 2003-1002, passed 8-25-03) Penalty, see § 10.99

§ 150.27 B-1 OFFICE PARK DISTRICT.

The following sections concern signs in the B-1 Office Park District, and said signs are regulated according to the requirements set forth below:

(A) In B-1 Districts, a business property may erect only signs described in subdivisions (1) and (3) below, or in subdivisions (1) and (4) below, or in subdivision (2) and (3) below, or in subdivisions (2) and (4) below, or in subdivision (5) unless modified by a planned unit development.

(1) *Free-standing or monument sign.* One free-standing sign, not to exceed 75 square feet in area, or one monument sign not to exceed 120 square feet.

(2) *Area identification sign.* One free-standing or monument sign per development, as described by § 150.03 of this chapter not to exceed 100 square feet in area.

(3) *Wall signs.* One and two story, single or multiple tenant buildings: Signs attached to two walls, immediately adjacent to a

public street or the parking lot which serves customers of the site, not to exceed ten percent of the building facade to which the signs are attached.

(4) *Wall signs.* Multiple story buildings (three or more stories).

(a) Identification signs: One identification sign per building facade identifying the name and/or address of the building, not to exceed ten percent in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(b) In addition to the identification signs described above in subdivision (a), wall signs may be attached to only one wall not to exceed ten percent of the building facade to which it is attached and must be located on the first story. The measured area is that building facade of the first and second story.

(5) *Three wall signs.* Wall signs are allowed on up to three walls only when immediately adjacent to a public street or the parking lot that serves customers of the site, subject to City Manager approval. The wall signs on each wall must individually conform to the area limitations defined in subdivisions (3) or (4) of this division.

(B) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs, are allowed only one monument sign with reader board per street frontage. The sign and reader board must not exceed 60 square feet in area.

(C) *Minimum setbacks.* Free-standing signs must be set back at least 25 feet from the front property line and at least ten feet from side and rear property lines; monument signs must be set back at least 15 feet from the front property line and at least ten feet from side and rear property lines. On corner lots, all monument signs must be set back at least 15 feet from front and side corner property lines, and all free-standing signs must be set back at least 25 feet from all front and side corner property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections.

(D) *Maximum height of signs.* Signs described in divisions (A)(1), (A)(2) and (B) of this section may not exceed 15 feet above grade for monument signs and 25 feet above grade for free-standing signs.

(E) *Minimum height of signs.* Free-standing signs must have a minimum height of seven feet from grade to the bottom of sign.

('72 Code, § 356.30(3)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2003-1002, passed 8-25-03; Am. Ord. 2014-1186, passed 12-15-14) Penalty, see § 10.99

§ 150.28 B-2 NEIGHBORHOOD RETAIL BUSINESS DISTRICT, B-3 GENERAL BUSINESS DISTRICT, AND B-4 VEHICLE SALES AND SHOWROOM DISTRICT.

The following sections concern signs in the B-2 Neighborhood Retail Business District and in the B-3 General Business District, and said signs are regulated according to the requirements set forth below:

(A) In B-2 and B-3 Districts, a business property may erect only signs described in subdivisions (1) and (3) below, or in subdivisions (1) and (4) below, or in subdivisions (2) and (3) below, or in subdivisions (2) and (4) below, or (5) below, unless modified by a planned unit development.

(1) *Free-standing or monument sign.* One free-standing sign not to exceed 100 square feet in area, or one monument sign not to exceed 120 square feet in area.

(2) *Area identification sign.* One free-standing or monument per development, as described by § 150.03 of this chapter not to exceed 320 square feet in area.

(3) *Wall signs.* One and two story, single or multiple tenant buildings: Signs attached to two walls immediately adjacent to a public street or the parking lot which serves customers of the site, not to exceed ten percent of the building facade to which the signs are attached.

(4) *Wall signs.* Multiple story buildings (three or more stories):

(a) Identification signs: One identification sign per building facade identifying the name and/or address of the building, not to exceed ten percent in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(b) In addition to the identification signs described above in subdivision (a), wall signs must be attached to only one wall, not to exceed ten percent of the building facade to which the signs are attached and must be located on the first story. The measured area is that building facade of the first and second story.

(5) *Three wall signs.* Wall signs are allowed on up to three walls only when immediately adjacent to a public street or the parking lot that serves customers of the site, subject to City Manager approval. The wall signs on each wall must individually conform to the area limitations defined in subdivisions (3) or (4) of this division.

(B) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs are allowed only one monument sign with reader board per street frontage. The sign and reader board must not exceed 60 square feet in area.

(C) *Minimum setbacks.* Free-standing signs must be set back at least 25 feet from the front property line and at least ten feet from side and rear property lines; monument signs must be set back at least 15 feet from the front property line and at least ten feet from side and rear property lines. On corner lots, all monument signs must be set back at least 15 feet from front and side corner property lines, and all free-standing signs must be set back at least 25 feet from all front and side corner property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections.

(D) *Maximum height of signs.* Signs described in division (A)(1), (A)(2) and (B) of this section may not exceed 15 feet above grade for monument signs and 25 feet above grade for free-standing signs.

(E) *Minimum height of signs.* Free-standing signs must have a minimum height of seven feet from grade to the bottom of sign.

('72 Code, § 356.30(4)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2003-1002, passed 8-25-03; Am. Ord. 2014-1186, passed 12-15-14) Penalty, see § 10.99

§ 150.29 BP BUSINESS PARK AND I GENERAL INDUSTRIAL DISTRICTS.

The following sections concern signs in the BP Business Park District and I General Industrial District, and said signs are regulated according to the requirements set forth below:

(A) In BP and I Districts, a business property may erect only signs described in subdivisions (1) and (3) below, or in subdivisions (1) and (4) below, or in subdivisions (2) and (3) below, or in subdivisions (2) and (4) below, or subdivision (5) below unless modified by a planned unit development.

(1) *Free-standing or monument sign.* One free-standing sign, not to exceed 100 square feet in area, or one monument sign not to exceed 120 square feet.

(2) *Area identification sign.* One free-standing or monument sign per development, as described by § 150.03 of this chapter not to exceed 220 square feet in area.

(3) *Wall signs.* One and two story buildings, single or multiple tenant buildings: Signs attached to two walls, not to exceed ten percent of the building facades to which the signs are attached.

(4) *Wall signs.* Multiple story buildings (three or more stories).

(a) *Identification signs:* One identification sign per building facade identifying the name and/or address of the building, not to exceed ten percent in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(b) In addition to the identification signs described above in subdivision (a), wall signs must be attached to only one wall not to exceed ten percent of the building facade to which it is attached and must be located on the first story. The measured area is that building facade of the first and second story.

(5) *Three wall signs.* Wall signs are allowed on only three walls only when immediately adjacent to a public street or the parking lot that serves customers of the site, subject to City Manager approval. The wall signs on each wall must individually conform to the area limitations defined in subdivisions (3) or (4) of this section.

(B) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs are allowed only one monument sign and/or reader board per street frontage. The sign and reader board must not exceed 60

square feet in area.

(C) *Minimum setbacks.* For subdivisions (A)(1) and (A)(2) of this section, free-standing signs must be set back 25 feet from the front property line and ten feet from side and rear property lines; monument signs must be set back at least 15 feet from the front property lines and ten feet from side and rear property lines. For division (B) of this section, signs must be set back at least 15 feet from the front property line and at least ten feet from side and rear property lines. On corner lots, all free-standing signs must be set back at least 30 feet from all property lines, and all monument signs must be set back at least 15 feet from all property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections.

(D) *Maximum height of signs.* For signs described in subdivisions (A)(1) and (A)(2) of this section, signs may not exceed 15 feet above grade for monument signs and 25 feet above grade for free-standing signs. For signs described in division (B) of this section, no sign may exceed 15 feet above grade.

(E) *Minimum height of signs.* Free-standing signs must have a minimum height of seven feet from grade to the bottom of sign.

(F) *Billboard signs.* Billboard signs are allowed in the I District by conditional use permit as provided by the city zoning ordinance. A billboard sign must be the principal use on the lot on which it is located. The lot must meet the minimum lot requirements for the I District in accordance with the zoning code. A billboard must not be erected within 300 feet of any Residential District. A billboard must not be located within a 1,320 foot radius of an existing or approved billboard. A billboard must not be located in the T.H. 610 Corridor or Highway Overlay area as delineated in the T.H. 610 Corridor Plan and the zoning code.

(1) *Sign area.* Billboard signs must not exceed one square foot of sign area for each lineal foot of street frontage nor may sign area exceed 300 square feet on any side. On corner lots or lots with more than one street frontage, only one street frontage will be considered in determining the sign area. Signs must have no more than two sides.

(2) *Minimum setbacks.* Billboard signs must be set back at least 50 feet from front and rear property lines and at least 25 feet from side property lines.

(3) *Maximum height of signs.* Billboard signs may not exceed 25 feet above grade.

(4) *Minimum height of signs.* Billboard signs must have a minimum height of 12 feet from grade to the bottom of the sign.

(5) *Sign illumination.* Billboard sign illumination must meet the requirements of § 150.03 of this chapter.

('72 Code, § 356.30(5)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 1994-766, passed 9-12-94; Am. Ord. 1999-914, passed 11- -99; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2010-1117, passed 9-7-10;. Am. Ord. 2014-1186, passed 12-15-14) Penalty, see § 10.99

§ 150.30 PCDD PLANNED COMMUNITY DEVELOPMENT DISTRICT AND PUD PLANNED UNIT DEVELOPMENT DISTRICT.

The following sections concern signs in the PCDD Planned Community Development District, and the PUD Planned Unit Development District, and said signs are regulated according to the requirements set forth below:

(A) In the PCDD or PUD Districts, a property used for single-family, two-family, residential townhouse or apartment use may erect only signs as allowed by § 150.25 and § 150.26 of this chapter, as established for Residential Districts.

(B) In PCDD and PUD Districts, a property used for other than single-family, two-family, residential townhouse or apartment use may erect only signs described in subdivisions (1) and (3) below, or in subdivisions (1) and (4) below, or in subdivisions (2) and (3) below, or in subdivisions (2) and (4) below, or in subdivision (5) below unless modified by a General Plan of Development or a planned unit development.

(1) *Monument sign.* One monument sign, not to exceed 120 square feet in area.

(2) *Area identification sign.* One free-standing or monument sign per development, as described by § 150.03 of this chapter not to exceed 220 square feet in area.

(3) *Wall signs.* One and two story, single or multiple tenant buildings: Signs attached to two walls immediately adjacent to a public street or the parking lot which serves customers of the site, not to exceed ten percent of the building facade to which the signs are attached.

(4) *Wall signs.* Multiple story buildings (three or more stories):

(a) Identification signs: One identification sign per building facade identifying the name and/or address of the building, not to exceed ten percent in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(b) In addition to the identification signs described above in subdivision (a), wall signs may be attached to only one wall not to exceed ten percent of the building facade to which the signs are attached and must be located on the first story. The measured area is that building facade of the first and second story.

(5) *Three wall signs.* Wall signs are allowed on up to three walls only when immediately adjacent to a public street or the parking lot that serves customers of the site, subject to City Manager approval. The wall signs on each wall must individually conform to the area limitations defined in subdivisions (3) or (4) of this division.

(C) *Institutional signs.* Institutional uses which do not meet the criteria stated in § 150.03 of this chapter for area identification signs are allowed only one monument sign and/or reader board per street frontage. The sign and reader board must not exceed 60 square feet in area.

(D) *Minimum setbacks.*

(1) For subdivision (B)(1) of this section, monument signs must be set back at least 15 feet from the front property line and at least ten feet from side and rear property lines. For subdivision (B)(2) of this section, free-standing signs must be set back at least 30 feet from all property lines, and monument signs must be set back at least 15 feet from all property lines. For division (C) of this section, signs must be set back at least 15 feet from front property line and at least ten feet from side and rear property lines.

(2) On corner lots, all free-standing signs must be set back at least 30 feet from all property lines, and all monument signs must be set back at least 15 feet from all property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections.

(E) *Maximum height of signs.* For signs described in subdivision (B)(1) of this section, no sign may exceed 15 feet above grade. For signs described in subdivision (B)(2) of this section, no free-standing sign may exceed 25 feet above grade and no monument sign may exceed 15 feet above grade. For signs described in division (C) of this section, no sign may exceed 15 feet above grade.

(F) *Minimum height of signs.* Free-standing signs must have a minimum height of seven feet from grade to the bottom of sign.

('72 Code, § 356.30(6)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2003-1002, passed 8-25-03; Am. Ord. 2014-1186, passed 12-15-14) Penalty, see § 10.99

§ 150.31 PI PUBLIC INSTITUTIONAL DISTRICT.

The following sections concern signs in the PI Public Institutional District, and said signs are regulated according to the requirements set forth below:

(A) In PI Districts, a property may erect only signs described in subdivisions (1) and (3) below, or in subdivisions (1) and (4) below, or in subdivisions (2) and (3) below, or in subdivisions (2) and (4) below, or subdivision (5) below unless modified by a conditional use permit.

(1) *Free-standing or monument sign.* One freestanding sign, not to exceed 50 square feet in area, or one monument sign not to exceed 120 square feet.

(2) *Area identification sign.* One free-standing sign or monument sign per development, as described by § 150.03 of this chapter not to exceed 320 square feet in area.

(3) *Wall signs.* One and two story, single or multiple tenant buildings: Signs attached to one wall not to exceed ten percent of the building facade to which the signs are attached.

(4) *Wall signs.* Multiple story buildings (three or more stories):

(a) Identification signs: One identification sign per building facade identifying the name and/or address of the building, not to exceed ten percent in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(b) In addition to the identification signs described above in subdivision (a), wall signs may be attached to only one wall, not to exceed ten percent of the building facade to which the signs are attached and must be located on the first story. The measured area is that building facade of the first and second story.

(5) *Two wall signs.* Wall signs are allowed on only two walls. The wall signs on each wall must individually conform to the area limitations, defined in subdivisions (3) or (4) of this division.

(B) *Minimum setbacks.* For subdivisions (A)(1) and (A)(2) of this section, all signs must be set back at least 15 feet from the front property line and at least ten feet from side and rear property lines. On corner lots, all signs must be set back at least 15 feet from all property lines. All signs must be set back a minimum of three feet from driveways to edge of sign, and a 30 foot clear-view triangle must be maintained at public street intersections.

(C) *Maximum height of signs.* For signs described in subdivision (A)(1) of this section, no sign may exceed 20 feet above grade. For signs described in subdivision (A)(2) of this section, no sign may exceed 25 feet above grade.

(D) *Minimum height of signs.* Free-standing signs must have a minimum height of seven feet from grade to the bottom of sign.

('72 Code, § 356.30(7)) (Ord. 1988-602(A), passed 8-22-88; Am. Ord. 1992-694, passed 5-11-92; Am. Ord. 2000-935, passed 11-13-00; Am. Ord. 2014-1186, passed 12-15-14) Penalty, see § 10.99

§ 150.32 HIGHWAY OVERLAY.

The following provisions concern signs in the Highway Overlay area, and the signs are regulated according to the requirements set forth below. In the Highway Overlay, properties may erect only signs described in divisions (A), and (C) below, or in divisions (A) and (D) below, or in divisions (B) and (C) below, or in divisions (B) and (D) or in division (E) below unless modified by a Development Plan.

(A) *Monument sign.* One monument sign, not to exceed 100 square feet in area.

(1) *Minimum setbacks.* Monument signs must be setback at least 15 feet from the property lines adjacent to public rights-of-way, at least ten feet from side and rear property lines, at least three feet from driveways to the edge of sign, and must maintain a 30-foot clear-view triangle at public street intersections.

(2) *Maximum height of signs.* No sign may exceed 15 feet above grade.

(3) *Design and materials.* Monument bases must be constructed of the same materials as the principal building.

(B) *Area identification sign.* One monument sign per development, as described by § 150.03, not to exceed 220 square feet in area.

(1) *Minimum setbacks.* Signs must be setback at least 15 feet from the property lines adjacent to public rights-of-way, at least ten feet from side and rear property lines, at least three feet from driveways to the edge of sign, and must maintain a 30-foot clear-view triangle at public street intersections.

(2) *Maximum height of signs.* No sign may exceed 15 feet above grade.

(3) *Design and materials.* Monument bases must be constructed of the same materials as the principal building.

(C) *Wall signs.* Signs attached to only one wall, not to exceed 10% of the building facade to which the signs are attached.

(D) *Wall signs.* Multiple story buildings (three or more stories).

(1) Identification signs - One identification sign per building facade identifying the name and/or address of the building, not to exceed 10% in area of the building facade to which it is attached or 300 square feet, whichever is less. The measured area is that building facade above the second story.

(2) In addition to the identification signs described above, wall signs may be attached to only one wall not to exceed 10% of the building facade to which the signs are attached and must be located on the first story. The measured area is that building facade of the first and second story.

(E) *Two wall signs.* Wall signs are allowed on only two walls. The wall signs on each wall must individually conform to the area limitations defined in division (B) above.

(Ord. 1999-914, passed 11- -99)

CHAPTER 151: SUBDIVISIONS

Section

GENERAL PROVISIONS

§ 151.001 PURPOSE.

(A) The process of dividing raw land into home sites, or separate parcels for other uses, is one of the most important factors in the growth of any community. Few activities have a more lasting effect upon its appearance and environment. Once the land has been subdivided and the streets, homes and other structures have been constructed, the basic character of this permanent addition to the 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 and various public services must be provided. 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.

(B) All subdivisions of land hereafter submitted for approval must fully comply, in all respects, with the regulations set forth herein. It is the purpose of these regulations to:

(1) Encourage well planned, efficient, and attractive subdivisions by establishing reasonable standards for design and construction;

(2) Provide for the public health, safety and general welfare of residents by requiring properly designed streets, park land, and adequate sanitary sewer, storm sewer and water service;

(3) Place the cost of improvements against those benefitting financially from their construction; and

(4) Secure the rights of the public with respect to public lands and waters.

(C) The Council of the City of Brooklyn Park deems these regulations to be necessary for the preservation of the health, safety and general welfare of this community. These regulations have been developed under the authority contained in M.S. § 462.358, and are supplemented by appropriate sections of § 150.01, as indicated.

('72 Code, § 345:00) (Am. Ord. 1984-447(A), passed 4-9-84)

§ 151.002 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. The City Manager or designee duly appointed and charged with enforcement of this chapter.

ADMINISTRATIVE REVIEW COMMITTEE. A committee made up of representatives from various city departments, as designated by the City Manager.

BLOCK. An area of land within a subdivision that is entirely bounded by a street or by streets and the exterior boundary or boundaries of the subdivision, or a combination of the above with a river or lake.

BUTT LOTS. Any lot, or lots, at the end of a block, located between two corner lots.

COMPREHENSIVE PLAN. A compilation of policy statements, goals, text, standards and maps for guiding the physical, social and economic development, both public and private, of the municipality and its environs, as defined in the Minnesota Metropolitan Land Planning Act, M.S. §§ 473.851 to 473.868, and includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

EASEMENT. A grant by an owner of land for the specific use of the land for a public or quasi-public purpose.

FINAL PLAT. The final map, drawing, or chart on which the subdivider's plan of a subdivision is presented to the City Council for approval and which, if approved, will be submitted to the County Recorder or Registrar of Titles.

LOT. A parcel or portion of land in a subdivision or plat of land, separated from other parcels or portions by description as on a subdivision or record of survey map, for the purpose of sale or lease or separate use thereof.

OWNER. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having proprietary interest in the land being subdivided under this chapter.

PLANNING COMMISSION. The Planning Commission of the City of Brooklyn Park.

PEDESTRIAN WAY or ***WALKWAY.*** A public right-of-way across or within a block to provide access for pedestrians.

PRELIMINARY PLAT. A tentative map, drawing, or chart of a proposed subdivision meeting requirements herein enumerated.

REVERSE FRONTAGE LOT (DOUBLE FRONTAGE LOT). A lot extending between two streets with vehicular access which may be limited to one street at the time of subdividing.

STREETS AND ALLEYS.

(1) ***STREET.*** A public way for vehicular traffic whether designated as a street, highway, thoroughfare, collector, collector parkway, minor collector and minor collector parkway, throughway, road, arterial, minor arterial, avenue, lane, place, or however otherwise designated. The width of a street is measured between right of way lines.

(2) ***COLLECTOR STREET.*** A street which carries traffic from subdivision streets to arterial streets. It includes the principal access streets to a residential development and streets for circulation within such a development.

(3) ***CUL-DE-SAC.*** A short, minor street having only one outlet and a vehicular turnabout.

(4) ***FRONTAGE ROAD.*** A minor street which is somewhat parallel and adjacent to a minor arterial or higher functional classification and which provides access to abutting properties and protection from through traffic.

(5) ***SUBDIVISION STREET.*** A street of limited continuity used primarily for access to the abutting properties and the local needs of the neighborhood.

(6) ***PRIVATE STREET.*** A street serving as vehicular access to two or more parcels of land which is not dedicated to the public but is owned by one or more private parties.

(7) ***ALLEY.*** A minor way of providing secondary vehicular access to the side or rear of two or more properties abutting on a street.

(8) ***MINOR ARTERIAL AND COLLECTORS.*** Streets designated on the comprehensive plan and used primarily by fast moving traffic at heavy volumes as traffic arteries for intercommunication between and among neighborhoods and other large areas. These streets are so designated for the purposes of applying the subdivision design standards found in § 151.056 of this chapter.

(9) ***COMMERCIAL/INDUSTRIAL STREET.*** A street designed for the primary purpose of serving industrial, multiple residential, or commercial property.

(10) ***MINOR COLLECTOR.*** A street which connects neighborhoods within subregions and which carries traffic from subdivision streets to the nearest major streets; however, traffic levels on a minor collector cannot reasonably be expected to exceed 3,000 ADT due to certain roadway design elements intended to reduce speeds and discourage use by through traffic.

SUBDIVIDER. Any person commencing proceedings under this chapter to effect a subdivision of land for that person or for others.

SUBDIVISION. The division of an area, parcel or tract of land into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or other use or any combination thereof, except those divisions when a new street is being created by a governmental agency which results in a division of a parcel of land. The term includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land subdivided or for adjustments in boundary lines.

('72 Code, § 345:02) (Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1992-705, passed 9-14-92)

§ 151.003 PROCEDURAL REQUIREMENTS.

Before dividing any tract of land into two or more lots or parcels, or adjusting any boundaries not covered by M.S. § 462.352, Subd. 12, the procedures set forth in this chapter must be followed.

('72 Code, § 345:04) Penalty, see § 10.99

§ 151.004 PRE-APPLICATION PROCEDURAL REQUIREMENTS.

(A) Prior to the preparation of a preliminary plat, the subdividers or owners must meet with the Administrator and other appropriate officials in order to be made fully aware of all applicable ordinances, regulations and plans in the area to the subdivided. At this time, or at subsequent informal meetings, the subdivider must submit a general sketch plan of the proposed subdivision and drainage plan. The sketch plan can be presented in simple form but must show any zoning changes which would be required, and must show that consideration has been given to the relationship of the proposed subdivision to existing community facilities that would serve it, to neighboring subdivisions and development, and to the topography of the site. The Administrator may require the subdivider to provide an area-wide concept platting plan for all neighboring properties if deemed necessary for coordinated planing.

(B) The subdivider is urged to avail the subdivider of the advice and assistance of the city staff in order to facilitate the approval of the preliminary plat. However, such advice should not be construed to predict final action by the City Council.

('72 Code, § 345:06)

§ 151.005 PROCEDURE, PRELIMINARY PLAT, FEES AND DEPOSIT.

(A) (1) After the pre-application meeting, the subdivider must file with the Department of Community Development an application completed in compliance with all city regulations and 20 copies of the preliminary plat which has been prepared in accordance with the

regulations set forth in this chapter. At the time of submission of the preliminary plat, a non-refundable subdivision filing fee and a minimum subdivision cash escrow as established in the fee resolution, set forth in the Appendix to this code, must be paid in cash to the City Treasurer. The fee will be placed in the general fund and the cash escrow must be held in a special subdivider's cash escrow account credited to the subdivider. Costs of city services, legal expenses and materials provided in reviewing and processing of the preliminary plat will be charged to the subdivider's cash escrow account and must be credited to the City of Brooklyn Park. The fees and costs to be paid by the subdivider are not contingent upon approval or denial of the preliminary plat or final plat.

(2) The Council must promulgate and adopt a set of rules, regulations and fees for services rendered by city personnel, and the rules, regulations and fee schedules are on file with the City Clerk for inspection. A copy thereof must be furnished upon request to the subdivider. The city must itemize all time, services and materials billed to any subdivider's cash escrow account. The subdivider making the deposit(s) in the subdivider's cash escrow account must upon request, be furnished a copy of the itemized charges.

(3) If, at any time, the balance in the subdivider's cash escrow account is depleted to less than 5% of the originally required cash escrow amount, the subdivider must deposit additional funds in the subdivider's cash escrow account in an amount as determined by the Planning Director and City Engineer, sufficient to cover all costs to be incurred by the city in implementing the platting process. Any balance remaining in the account upon completion of all platting conditions must be returned to the depositor by the Finance Department after all claims and charges thereto have been paid and after approval by City Council.

(4) Park dedication in the form of land or cash will be computed prior to approval of preliminary plat; however any amount of cash in lieu of dedication of land must be collected prior to the time the final plat is released for recording.

(B) The planning staff must refer copies of the preliminary plat to the Engineering Department. An engineering review will be made and a written report attached prior to forwarding to the Planning Commission.

(C) The planning staff must refer copies of the preliminary plat to the Parks and Recreation Department. A park and recreation staff review will be made, as needed, and forwarded to the planning staff prior to forwarding an overall staff report to the Planning Commission.

(D) The planning staff must refer copies of the preliminary plat to the Planning Commission. The planning staff will arrange for a public hearing to be held within 45 days of the filing date. The required legal publication must be made and notices must be sent to all property owners of record within 350 feet of the exterior boundary of the proposed plat.

(E) The subdivider or a duly authorized representative must attend the Planning Commission meetings at which this proposal is scheduled for consideration.

(F) (1) The Planning Commission and City Council must study the practicability of the preliminary plat taking into consideration the requirements of the city. Particular attention must be given, but not limited to, the arrangement, location, and width of streets, their relation to the topography of the land, flood plain regulations, water supply, sewage disposal, drainage, lot sizes and arrangement, the present and future development of adjoining lands, and the requirements of the comprehensive plan, and the zoning ordinance.

(2) The Planning Commission must study and must make recommendations and the City Council must consider the following: whether the proposed subdivision is consistent with applicable specific area plans or the comprehensive plan; whether the design is consistent with applicable development plans or policies; whether the physical characteristics of the site, including but not limited to, topography, vegetation, susceptibility to erosion, siltation, flooding and water storage or retention and flood plain regulations, are suitable for the type and/or density of development or use contemplated; the environmental impact of the subdivision design or proposed improvements; whether the design of the subdivision or the type of improvement is consistent with easements of record or easements established by judgment of a court; traffic considerations; and any other aspect affecting the public health, safety or welfare. The Planning Commission may recommend and the City Council may approve reasonable conditions on the plat to negate any problem areas.

(G) At the public hearing all persons interested in the proposed plat must be heard and the Planning Commission must within 30 days of the closing of the hearing, recommend approval, modify, or recommend disapproval of the preliminary plat or waiver of platting and submit to the City Council, the applicant and the City Manager, their findings and recommendations. The City Council must act upon the preliminary plat and send written notification of their action to the applicant. Failure of the governing body to act within 120 days of the filing of an application in complete compliance with the ordinance is deemed approval of the plat. The grounds for any refusal to approve a plat must be set forth by the Council in a resolution and reported to the applicant in writing. Should the subdivider desire to amend the preliminary plat as approved by the Council, the subdivider must submit the amended plat following the original procedure set forth, except for the public hearing and fees unless the Planning Commission considers the scope of the revisions to constitute a new plat, then the hearing and fees are required.

('72 Code, § 345:08) (Am. Ord. 1975-215(A), passed 12-8-75; Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1994-756, passed 5-

9- 94)

§ 151.006 PROCEDURE; FINAL PLAT.

(A) The subdivider, within one year, unless extensions are granted by the City Council by resolution, after the approval of the preliminary plat, must file with the Director of Community Development, 15 copies of the final plat prepared by a land surveyor duly registered in the State of Minnesota. Failure of the subdivider to submit the final plat within those times designated by City Council resolutions will cause the preliminary and final plats to become null and void.

(B) The subdivider must also submit to the City Attorney, at the same time, an up-to-date certified abstract of title or registered property abstract and such other evidence as the City Attorney may require showing title or control of the land by the subdivider.

(C) The subdivider must have incorporated all changes or modifications required by the City Council, but in all other respects the final plat must conform to the preliminary plat.

(D) If the subdivider requests that any special assessments which have been levied against the property described be divided and allocated to the respective lots in the proposed plats, the Department of Public Works must estimate the clerical cost of preparing a revised assessment roll, filing the same with the County Auditor, and making such division and allocation, and upon approval by the City Manager of such estimated cost, the same must be paid by the subdivider to the Finance Department from the subdivider's escrow account.

(E) The required utility layout must be submitted by the subdivider to the City Engineer for the City Engineer's cost estimate. A copy of the City Engineer's report must be submitted to the Director of Community Development for the preparation of the contract required in § 151.089 of this chapter.

(F) The Director of Community Development, upon receipt of the final plat, must retain one copy of the final plat for the Director's records, and must:

(1) Refer 14 copies of the final plat to the Administrative Review Committee, who must review the final plat with respect to its conformance with the approved preliminary plat.

(2) Refer the current abstract of title or registered property abstract to the City Attorney for the Attorney's examination and report. The City Attorney's written report must be submitted to the Director of Community Development within 30 days of its receipt by the Attorney.

(3) Obtain a written report or statement from the Finance Director certifying the payment by the subdivider of all fees due the city pursuant to this chapter.

(G) The City Council must, by resolution, authorize the Mayor and City Manager to sign the final plat.

(H) If a report from the Director of Community Development indicates, in the Director of Community Development's judgment, there is a substantial deviation in the final plat from the approved preliminary plat, the City Council may determine if the submission represents a new plat. If the submission does represent a new plat, the City Council must deny the final plat and direct the subdivider to resubmit the subdivider's proposal following preliminary plat requirements.

(I) The subdivider must, if the final plat is signed by the Mayor and City Manager, record the final plat with the County Recorder or the Registrar of Titles within 180 days of the date of the Council resolutions approving the final plat, or within 180 days after the plat is considered approved by reason of the City Council's failure to act within the 120 day statutory period. Any plat not filed and recorded in accordance with this section becomes null and void.

(J) Changes, erasures, modifications or revisions must not be made in any final plat after approval has been given by the City Council and endorsed in writing on the plat, unless the plat is first resubmitted to the City Council and that body approves any modifications. In the event that any such final plat is recorded without complying with this requirement, the same is considered null and void and the City Council must institute proceedings to have the plat stricken from the records of the city.

('72 Code, § 345:10) (Am. Ord. 1977-248(A), passed 8-22-77; Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1992-705, passed 9-14- 92)

§ 151.007 PROCEDURES FOR TIME EXTENSIONS.

(A) (1) If a time extension is to be requested, for a preliminary or final plat as previously approved by the City Council, the one year extension must be requested and must appear on a City Council agenda for approval within one year of the date of the original Council approval of the plat or last Council action to extend that approval. A time extension request which encounters delays in the review process and through no fault of the applicant cannot be scheduled for Council action as anticipated may proceed through the process to final resolution without jeopardy.

(2) The provisions of this division do not apply to original Council approvals or time extensions granted prior to the effective date of this chapter. All original Council approvals or time extensions granted subsequent to the effective date of this chapter are bound by the provisions of this division.

(B) This request must be reviewed by the Planning Commission and a recommendation forwarded to the City Council addressing such items as potential conflicts with the comprehensive plan or specific area plans; potential conflicts with policy changes; changing transportation conditions and sidewalk policies; or applicable changes to any city, state or federal ordinances.

(C) The city staff may recompute park dedication fees and other financial guarantees as required by the city code to reflect current cost estimates. These revised costs must be included in the time extension resolution.

(D) Any negative escrow amounts must be paid and the escrow amount must be brought up to current minimum requirements with the request for time extension.

(E) A current property owners list from Hennepin County must be submitted every two years based upon the original date of Council approval only in instance where such lists are necessary for the notification of owners of property not lying within the Brooklyn Park corporate limits but within the standard notification area.

('72 Code, § 345:11) (Ord. 1992-705, passed 9-14-92; Am. Ord. 1993-746, passed 12-13-93)

§ 151.008 CONDITIONAL USE PERMIT SPECIAL ZONING PROCEDURES.

The City Council upon receiving a report from the Planning Commission may grant a variance in these regulations in case of a subdivision which is part of a conditional use permit special procedure approved under the provisions of the zoning ordinance for the City of Brooklyn Park.

('72 Code, § 345:82) (Am. Ord. 1984-447(A), passed 4-9-84)

§ 151.009 REGISTERED LAND SURVEYS.

It is the intention of this chapter that all registered land surveys in the city must be presented to the Planning Commission in the form of a preliminary plat and in accordance with the standards set forth in this chapter for preliminary plats. A registered land survey must be treated as any other subdivision, and the Planning Commission must approve the arrangement, sizes, and relationships of proposed tracts and such registered land surveys and tracts to be used as easements or roads must be dedicated as in any other plat or division. Unless such approvals in accordance with the standards set forth in this chapter have been obtained, building permits will be withheld for building on tracts which have been so subdivided by registered land surveys without compliance with the ordinance and Council approval. The City Council may refuse to take over tracts, streets, roads or to improve, repair or maintain any such tracts or areas unless so approved.

('72 Code, § 345:88)

§ 151.010 CONVEYANCE BY METES AND BOUNDS.

(A) No conveyance of land, in which the land conveyed is described by metes and bounds or by reference to a plat made after the effective date of this chapter which has not been approved as provided herein, and no conveyance which results in the division of a platted lot will be made or recorded unless the parcel described in the conveyance and the residue parcel meet the following standards:

(1) Was a separate parcel of record April 1, 1945, or the date of adoption of subdivision regulations by the city under Minnesota Laws of 1945, Chapter 287, whichever is the later;

(2) Was the subject of a written agreement to convey entered into prior to such time and was recorded in the office of the County Recorder or the Registrar of Titles within one year thereafter; or

(3) Was a separate parcel of not less than two and one-half acres in area and 150 feet in width on January 1, 1966; or

(4) Was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980; or

(5) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any of which is less than five acres in area or 300 feet in width; or

(6) Is a single parcel of residential or agricultural land 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 City Council may waive such compliance by adoption of a resolution to that effect pursuant to §§ 151.100 et seq., and other provisions of these subdivision regulations. All requests for waivers require a public hearing and must follow the same procedure as required in public hearings for plats.

('72 Code, § 345:91) (Am. Ord. 1973-147(A), passed 6-11-73; Am. Ord. 1974-170(A), passed 7-22-74; Am. Ord. 1984-447(A), passed 4- 9-84)

§ 151.011 STRUCTURES ABUTTING PUBLIC STREETS.

(A) With respect to parcels of land not subject to the provisions of M.S. § 462.358, Subd. 4b, and § 151.010 of this chapter, a building or structure must not be constructed or erected on such parcels, nor must any building permit be issued for such construction or erection, unless such parcels abut upon a public street which has been dedicated to and accepted by the city. This provision does not apply if the structure is to be used solely for agricultural purposes and the property is served by a private street or private easement.

(B) This requirement may be waived by the City Council if the Council makes the following findings:

(1) That the proposed structure is located on a properly designed and approved private street; and

(2) The development is not in conflict with the city's growth management principles.

('72 Code, § 345:92) Penalty, see § 10.99

§ 151.012 RESUBDIVIDING COMBINED PARCELS.

Any parcel of land, either platted or unplatted, that has been combined for tax purposes or for other reasons cannot be reseparated without a waiver of platting or plat approved by the City Council in a manner prescribed in § 151.003.

('72 Code, § 345:93) (Ord. 1986-528(A), passed 5-27-86)

§ 151.013 BUILDING PERMITS.

No building permits will be issued by the city for the construction of any building or structure on any lot in the subdivision as defined herein which has been approved for platting until all requirements of this chapter have been fully complied with. No building permit will be issued for a lot not having the required right-of-way frontage on a public street in the zoning district in which it is located.

('72 Code, § 345:94)

§ 151.014 SUBDIVISION AND ZONING FEES.

Subdivision and zoning fees are established by the fee resolution set forth as an Appendix to this code.

('72 Code, § 520:00(6)) (Am. Ord. 1981-374(A), passed 12-14-81; Am. Ord. 1986-540(A), passed 8-18-86; Am. Ord. 1990-660(A), passed 10-8-90)

§ 151.025 PRELIMINARY PLAT REQUIREMENTS.

(A) *Survey and design information required.* The preliminary plat must be clearly and legibly drawn at a scale ranging from 1":10', 1":20', 1":30', 1":40' or 1":50' as accepted by the Department of Community Development or the Planning Commission and must contain the information set forth in the divisions of this section which follow.

(B) *Identification and description.*

(1) The proposed name of the subdivision, which name must not duplicate or be alike in pronunciation to the name of any plat previously recorded in the county.

(2) The location of the subdivision by section, township, and range or by other legal description.

(3) The name(s) and address(es) and telephone number(s) of the owner(s), and/or petitioner(s), subdivider, surveyor and/or designer.

(4) Graphic scale, north point, date of preparation and revision dates.

(C) *Existing conditions.*

(1) A boundary line drawing of the proposed subdivision, including measured distances and angles, which must be tied into the nearest section or quarter section corner by traverse.

(2) Existing zoning classifications for land within the subdivision and on abutting property.

(3) Total acreage.

(4) Location, width, and name of every existing or previously platted street or other public way showing present and proposed width, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, easements, section lines, flood plain limits, and corporate lines within the proposed subdivision and to a distance of 150 feet beyond.

(5) If the proposed subdivision is a rearrangement or replat of any former plat, the lot and block arrangement of the original plat along with its original name indicated by dotted or dash lines. Also, any revised or proposed to be vacated roadways of the original plat must be so indicated.

(6) Location and size of existing sewers, water mains, pipelines, high voltage lines, culverts or other underground facilities within the tract and to a distance of 150 feet beyond the tract, including such data as grades, invert elevations and locations of catch basins, manholes and hydrants.

(7) Boundary lines of adjoining unsubdivided or subdivided lands within 150 feet.

(D) *Subdivision design features.*

(1) Layout of proposed streets showing right-of-way widths and proposed street names. If the proposed street is an extension of an existing named street that name must be used. In all other cases the name of any street previously used within the county must not be used, unless such use is consistent with the county or community street naming system.

(2) Locations and widths of alleys, pedestrian ways, utilities, easements, and drainage plan.

(3) Layout, numbers and preliminary dimensions of lots and blocks, including the area in square feet of each proposed lot.

(4) Areas intended to be dedicated or reserved for public use including their size in acres or square footage.

(5) Areas intended for uses other than residential or public.

(6) Minimum front and side street building setback lines as required in the zoning district in which the subdivision is located.

(7) A proposed lot must not be divided by a boundary line between registered land and abstract property.

('72 Code, § 345:13)

§ 151.026 SUPPLEMENTARY INFORMATION REQUIRED.

The information set forth in this section must be filed with the preliminary plat:

(A) A complete topographic map at a scale of 1":100', 1":50', 1":40' or 1":20' and with contour intervals not greater than two feet showing water courses, flood plain limits, marshes, rock outcrops and other significant features, at least 150 feet beyond the boundary of the proposed plat, at least one print of the preliminary plat must be superimposed on a copy of the topographic map. U.S. Geodetic Survey datum must be used for all topographic mapping. Fulfillment of this requirement may be requested by the city staff, Planning Commission or City Council.

(B) Soil absorption tests where septic tanks are proposed, and any other subsoil information requested by the city staff, including soil bearings and water table.

(C) Plans for water supply, sewage disposal, proposed grades, drainage and flood control including the proposed locations, size and gradient of proposed sewer lines and water mains and such other supporting data as may be required by the city staff, Planning Commission, or the City Council.

(D) Center line gradients of proposed streets and alleys.

(E) Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the Planning Commission may require that the subdivider submit a sketch plan of the rest of the subdivider's properties so as to show the relationship of the proposed subdivision to the future development of the adjacent property.

(F) Indicate if the land is registered or abstract property.

(G) Indicate other information as requested by the Departments of Community Development, Public Works or Parks and Recreation such as sidewalks, walkways, bikeways, berming or landscaping with a schedule of plantings or anticipated ground level building elevation(s).

(H) All plats within the designated Mississippi River Critical Area as defined by Executive Order No. 79-19 of the Critical Area Act of 1973, M.S. Chapter 116G, must indicate:

(1) Existing and proposed grades at two foot contour intervals.

(2) A landscaping plan as requested by the City Planner to compensate as transitioning, erosion control or improving the living environment.

(3) Submit an erosion and sedimentation control plan as requested by the City Engineer and the City Planner.

(4) Calculate and graphically describe the amounts and location of cut and fill determined in cubic yards. Length of storage and prevention measures for wind and water erosion must also be indicated.

(I) *Drainage ponds.* Determination shall be made between drainage ponds designed to hold water on a continuous basis and those designed to hold water on an infrequent basis. Areas designed for intermittent water storage shall be landscaped and maintained in accordance with required landscape provisions. Creation of larger, regional ponds is encouraged.

(J) Erosion and sediment control shall be addressed as follows:

(1) The development shall conform to the natural limitations presented by topography and soil so as to create the least potential for soil erosion.

(2) Erosion and siltation control measures shall be coordinated with the different stages of construction. Appropriate control measures shall be installed prior to development when necessary to control erosion.

(3) Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time.

(4) When soil is exposed, the exposure shall be for the shortest feasible period of time, as specified in the development agreement.

(5) Where the topsoil is removed, sufficient topsoil shall be set aside for respreading over the developed area. Topsoil shall be restored or provided to a minimum depth of three inches and shall be of a quality at least equal to the soil quality prior to development.

(6) Natural vegetation shall be protected wherever practical.

(7) Runoff shall be diverted to a sedimentation basin before being allowed to enter the natural drainage system.

(8) Development shall comply with and follow the applicable best management practices for erosion and sedimentation control as described in the Minnesota Pollution Control Agency's (MPCA) Best Management Practices Handbook as may be amended.

(9) All stormwater facilities are subject to inspection for conformance to approved plans prior to acceptance by the city.

(10) Projects initiated or directed by the city shall not be exempt from these rules.

('72 Code, § 345:16) (Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2002-985, passed 11-25-02)

§ 151.027 QUALIFICATIONS GOVERNING APPROVAL OF A PRELIMINARY PLAT.

(A) The approval of a preliminary plat by the City Council only constitutes acceptance of the design as a basis for the preparation of the final plat by the owners or subdividers. Subsequent approval by appropriate officials having jurisdiction will be required of the engineering proposals pertaining to water supplies, storm drainage, sewage disposal, sidewalks, grading, gradients and roadway widths, and the surfacing of streets prior to the approval of the final plat by the city.

(B) No plan will be approved for a subdivision which includes any area subject to periodic flooding or which contains extremely poor drainage facilities which would make adequate drainage of the streets and lots impossible, unless the subdivider agrees to make improvements which will, in the opinion of the City Engineer, make the area completely safe for occupancy and provide adequate street and lot drainage and is not in conflict with the city's flood plain regulations.

('72 Code, § 345:20)

FINAL PLAT

§ 151.040 FINAL PLAT REQUIREMENTS.

The final plat must be prepared in accordance with M.S. § 505.08, Subd. 1. The plat may consist of more than one sheet, numbered progressively.

('72 Code, § 345:22)

§ 151.041 NAME AND LOCATION.

The plat must contain the name of the subdivision, lettered in large print at the top of the plat, together with the location of the subdivision by section, range, and township and by city and county.

('72 Code, § 345:25)

§ 151.042 SCALE AND POINT.

The plat must contain a graphic scale and north point.

('72 Code, § 345:28)

§ 151.043 MAP.

The plat must contain an accurate map of the proposed subdivision at a scale acceptable to the County Recorder's Office which must show the information set forth in the divisions of this section which follow and meet the requirements of M.S. § 505.02:

(A) A boundary line survey including the measured distances and angles and the true distance and bearing between a known point

on the boundary and the nearest official monument which must be accurately described on the plat. One permanent monument must be placed on one corner of any plat of four or more lots.

(B) The accurate location of all monuments.

(C) Accurate angular and linear dimensions for all lines, angles and curvatures used to describe the boundaries, streets, alleys, easements, areas to be reserved for public use, and other important features within the proposed subdivision. All linear dimensions must be shown in feet and hundredths of feet and all angles and bearings must be shown in degrees, minutes and seconds. The radius, angle of curvature, point of tangent, point of curvature and length of arc must be shown for every curve. No ditto marks will be permitted in indicating dimensions.

(D) All lots and blocks numbered in numerical order.

(E) All municipal, township, county or sections lines within the proposed subdivision.

(F) Identification and accurate boundaries of any areas to be dedicated or reserved for public use or for the exclusive use of property owners within the subdivision.

(G) The names of all streets and alleys.

(H) If the subdivision is a replatting or rearrangement of a legal subdivision, the original platting shown by dotted lines.

(I) Low land and water areas.

(J) A letter, certified by an engineer or surveyor, attesting to lot square footage.

(K) A 1:500 scale and a 1:200 scale mylar of each final plat must be submitted to the Director of Community Development prior to release of the final plat for recording.

('72 Code, § 345:31) (Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1988-596(A), passed 7-11-88)

§ 151.044 SURVEYOR'S CERTIFICATE.

The plat must contain a notarized certification by a registered land surveyor that the plat represents a survey made by that surveyor and that the monuments shown therein exist as located and that all dimensions are correct, as required by M.S. § 505.03, Subd. 1.

('72 Code, § 345:34)

§ 151.045 SIGNATURE OF OWNERS AND DEDICATION.

The plat must contain a notarized certification by owner or owners and by any mortgage holder of record of the adoption of the plat and the dedication of streets and other public areas as required by M.S. § 505.03, Subd. 1.

('72 Code, § 345:37)

§ 151.046 RECORDING FORM.

The plat must contain a form for recording the approval of the City Council as follows:

Approved by the City of Brooklyn Park, Minnesota, this ___day of _____,

20__.

Signed _____

Mayor

Attest _____

City Manager

('72 Code, § 345:40)

DESIGN STANDARDS

§ 151.055 GENERAL REQUIREMENTS.

(A) The Planning Commission and the City Council, in their review of the preliminary plat, will take into consideration the requirements of the community and the best use of the land being subdivided.

(B) The subdivision must conform to the adopted zoning ordinance and must be in substantial conformance to the goals and policies set forth in the comprehensive plan.

(C) The arrangement, character, extent, width, and location of all streets must be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets. Wherever possible and necessary, the arrangement of streets in new subdivisions must provide for the continuation of existing streets in adjoining areas. Where adjoining unsubdivided areas may be subdivided, the arrangement of streets in a new subdivision must make provision for the proper projection of streets into adjoining areas by carrying the new streets to the boundaries of the new subdivision at appropriate locations.

(D) No street dedications will be accepted which require a crossing of a railroad, collector street, minor arterial, or intermediate arterial unless sufficient land is dedicated to provide for approaches sufficient for grade crossing or safe intersections.

(E) *Mailbox design*. The subdivider shall submit design details and plans for mailboxes on all new residential plats. Mailboxes shall be similar in design and be architecturally consistent with homes in the subdivision.

('72 Code, § 345:43) (Am. Ord. 2001-961, passed 11-26-01) Penalty, see § 10.99

§ 151.056 STREETS.

(A) *Widths*. Street right-of-way widths must be as shown on the comprehensive plan and where not shown therein, must be not less than as follows:

(1) Principal Arterial: variable.

(2) "A" or "B" Minor Arterial: 100 feet.

(3) Class I Collector: 80 feet.

(4) Class II Collector: 70 feet (may be adjusted upwards as necessary at intersection with arterial).

(5) Local street: 60 feet.

(6) Commercial and/or industrial street: 80 feet.

(B) *Intersections*. Insofar as practical streets must intersect at right angles. The angle formed by the intersection of two streets must be not less than 60 degrees. Intersections having more than four corners are prohibited. Intersections must not be closer than 150 feet as measured from centerline to centerline.

(C) *Deflections*. When connecting street lines deflect from each other at any point by more than ten degrees, they must be connected by a curve with a radius of not less than 100 feet, except in those cases specifically approved by the City Council.

(D) *Gradients*. All center line gradients must be at least 0.5 percent and must not exceed the following:

(1) Arterial streets and collector streets: four percent;

(2) Subdivision streets and frontage roads: six percent.

(E) *Vertical curves*. Different connecting street gradients must be connected with vertical curves. Minimum length in feet of these curves must be 30 times the algebraic difference in the percent of grade of the two adjacent slopes.

(F) *Street jogs.* Street jogs with center line offsets of less than 150 feet are prohibited as measured from centerline to centerline.

(G) *Subdivision streets.* Subdivision streets must be laid out so that their use by through traffic will be discouraged.

(H) *Cul-de-sacs.* The maximum length of a street terminating in a cul-de-sac must be 600 feet, measured from the center line of the street or origin to the center of the cul-de-sac and must have a radius of 60 feet.

(I) *Access to collectors or arterials.* In the case where a proposed plat is adjacent to a collector arterial street, the applicant is advised not to direct vehicle or pedestrian access from individual lots to such thoroughfares. Where possible, the subdivider must attempt to provide access to all lots via subdivision streets.

(J) *Platting of small tracts.* In the platting of small tracts of land fronting on arterials where there is no convenient access to existing entrances and where access from such plat would be closer than one-quarter mile from an existing access point, every effort must be made in such plats for the connection of roads to neighboring land. As the neighboring land is platted and developed, and access becomes possible at a preferred location, direct access will be prohibited.

(K) *Half streets.* Half streets are prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half street may be permitted. The probable length of time elapsing before dedication of the remainder will be considered in this direction.

(L) *Private streets.* Private streets are not permitted and public improvements will not be approved for any private street unless approved by the City Council as part of a conditional use permit for an overall development plan.

(M) *Hardship to owners of adjoining property.* The street arrangements must not be such as to cause hardship of adjoining property in platting their own land and providing convenient access to it.

(N) *Dedication of streets.* Except for private streets as designated in § 151.056, all proposed streets shown on the plat must be offered for dedication as public streets.

(O) Medians. Landscaped medians shall be required for Class I and II collector streets and cul-de-sac islands, as determined by the City Council, and constructed in accordance with standards established by the City Engineer.

('72 Code, § 345:46) (Am. Ord. 1984-447, passed 4-9-84; Am. Ord. 1992-705, passed 9-14-92; Am. Ord. 2001-961, passed 11-26-01) Penalty, see § 10.99

§ 151.057 ALLEYS.

(A) *Locational requirements.* Except in the case of a shopping center, planned as a unit, with off-street parking and loading space, either a public or private alley must be provided in a block where commercially zoned property abuts a major thoroughfare or a major street. Alleys in residential areas other than those zoned for multiple use will not be permitted except by special permission of the City Council.

(B) *Widths.* Alleys, where permitted by the City Council, must be at least 20 feet in width in residential areas and at least 30 feet wide in commercial areas, with adequate provisions for snow storage. Such snow storage locations must be approved by the City Council.

(C) *Grades.* All center line gradients in alleys must be at least 0.5 percent and must not exceed eight percent.

('72 Code, § 345:49) Penalty, see § 10.99

§ 151.058 EASEMENTS.

(A) *Provided for utilities.* Easements to a width as determined by the City Engineer, or at least 15 feet wide centered on rear or other lot lines must be provided for utilities where necessary. They must have continuity of alignment from block to block and at the deflection points easements for a pole line anchor must be provided where necessary.

(B) *Drainage.* Easements must be provided along each side of the center line of any water course or drainage channel whether or not shown in the comprehensive plan, to a width sufficient to provide proper maintenance and protection and to provide for storm water runoff and installation and maintenance of storm sewers. Where necessary, drainage easements corresponding with lot lines must be provided. Such easements for drainage purposes must not be less than five feet in width, each side of the lot line. Except

where an overall drainage and utility development plan for subdivisions have been approved by the City Engineer, all lots must be graded in such a manner to avoid additional drainage encroachment onto adjacent properties. This restriction applies during, as well as after, construction is completed.

(C) *Dedication.* All easements must be dedicated for the required uses by appropriate language on the plat, as required by M.S. § 505.03, Subd. 1.

('72 Code, § 345:52) Penalty, see § 10.99

§ 151.059 BLOCKS.

(A) *Length.* The maximum length of a block is1,500 feet and the minimum length is 400 feet. Blocks over 900 feet long may require pedestrian ways at least ten feet wide at their approximate center. The use of additional pedestrian ways to schools, parks and other destinations may be required.

(B) *Arrangements.* A block must be so designed as to provide two tiers of lots unless it adjoins a railroad, collector or arterial street system, or other types of barriers in the form of schools, parks, major developments, corporate limits or other major uses, where it may have a single tier of lots.

('72 Code, § 345:55)

§ 151.060 LOTS.

(A) *Location.* All lots must abut for their full frontage on a publicly dedicated street.

(B) *Size.* The lot dimensions must be such as to comply with the minimum lot areas specified in the zoning ordinance. Lot square footages must be designated on the preliminary plat. A letter must accompany the final plat, certified by an engineer or surveyor, stating that all lot sizes meet plat requirements.

(C) *Transition lots.* When platting is adjacent to incompatible land uses, except parks, depth of lots must be increased to allow for space, berming or other landscaping techniques to buffer each land use.

(D) *Side lot lines.* Side lines of lots must be substantially at right angles to straight street lines or radial to curved street lines.

(E) *Water courses.* Lots abutting upon a water course, drainageways, channel, or stream must have sufficient depth and width to provide a minimum area of land not subject to flooding equal to the minimum lot dimensions specified in the zoning ordinance for the district in which the lots are located.

(F) *Drainage.* Lots must be graded so as to provide drainage away from building locations. All landscaping features, such as retaining walls, and filling or grading, within drainage and utility easements must be reviewed and approved by the City Engineer and the City Planner.

(G) *Natural features.* In the subdividing of land, due regard must be shown for all natural features, such as tree growth, water courses, historic spots, or similar conditions, and plans must be adjusted to preserve those which will add attractiveness and stability to the proposed development.

(H) *Lot remnants.* All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots rather than allowed to remain as unusable or non-conforming parcels.

(I) *Adequate setbacks.* All plats with lots or tracts abutting on collector or arterial streets must have adequate width and depth to provide for the minimum setbacks to build in accordance with all city codes.

(J) *Minimum rear lot line.* Where practical, all lots should have a minimum of 30 feet in width at the rear lot line.

(K) *Double frontage lots.* Double frontage (lots with frontage on two parallel streets) or reverse frontage lots are not permitted except where lots back against a collector or arterial street. Such lots must have additional depth to allow for screening and/or planting along the back lot line in accordance with the Zoning Code, Environmental Quality. Vehicular access may be restricted as a condition of the plat.

(L) *Cul-de-sac lots.* If the front line of any lot is a curve or partly a curve with a radius of 175 feet, the frontage for purposes of

minimum requirements, will be measured at the building line. In addition thereto, the front footage of the front lot line will be 60 feet or as modified under special procedure provisions as established by the zoning ordinance.

('72 Code, § 345:58) (Am. Ord. 1978-266(A), passed 6-12-78; Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1996-801, passed 3-25- 96) Penalty, see § 10.99

§ 151.061 PUBLIC SITES AND OPEN SPACE AND PARK LAND DEDICATION.

(A) *Public sites and open spaces.* Where a proposed park, playground, or other public site shown on the adopted comprehensive plan or official map is embraced in part or in whole by a boundary of a proposed subdivision, and such public sites are not dedicated to the city, such public ground must be shown as reserved land on the preliminary plat to allow the city the opportunity to consider and take action toward acquisition of such public ground or park by purchase or other means prior to approval of the final plat.

(B) *Park land dedication.*

(1) In every plat, replat or subdivision of land allowing development for residential, commercial, industrial, or other uses or combination thereof, or where a waiver is granted, a reasonable portion of such land and/or cash must be set aside and dedicated by the tract owner or owners to the general public as open space for park and playground purposes, public open space for park and playground purposes, public open space or public ponds, except where adjustment to lot lines do not create additional lots.

(2) A minimum of ten percent of the buildable land to be used for residential, multiple-family residential, or uses other than commercial business or industrial purposes, is deemed a reasonable portion. BUILDABLE LAND means the gross acreage of all property in the proposed plat or subdivision excluding wetlands designated by federal or state agencies and those classified by the Wetland Conservation Act. The land must be suitable for public use as parks and playgrounds or for one of the aforedescribed purposes and the city is not required to accept land which will not be usable for parks and playground or which would require extensive expenditures on the part of the public to make them usable. The city has the option to require cash contribution in lieu of setting aside dedicated land or in requiring a part of the land as a parkland dedication and the balance of the land value in cash. Any such cash contribution will be a set amount determined annually based on a minimum of ten percent of the total fair market land value of the land within such plat, replat, waiver or subdivision, for residential and multiple-family residential uses. The amount is then established by equating the fair market value to a per unit fee based on the net density. In establishing the amount of land to be dedicated or preserved or the amount of the cash contribution, the city will give due consideration to the open space, recreational, or common areas and facilities proposed by the applicant to be open to the public.

(3) Any park dedication money so paid to the city must be placed in a special fund. The money shall be used only for:

(a) The acquisition of land for parks and playgrounds;

(b) Development of existing park and playground sites or facilities;

(c) Redevelopment or rehabilitation of existing park and playground sites or facilities; or

(d) Debt retirement in connection with land previously acquired for parks and playgrounds.

(4) The city must require a minimum cash park dedication for commercial or industrial plats or waivers of 5% of fair market land value. However, where the City Council deems it in the public interest (i.e. comprehensive plan or flood plain ordinance), it may require a minimum land dedication of five percent of the commercial or industrial land to be subdivided in lieu of a cash dedication. The lands must be indicated on the city's comprehensive plan or amendments, or must be designated on specific area plans for flood plain preservation, parks, trails, public open space or any combination thereof.

(5) Any lands which obtain a waiver of the subdivision requirements are subject to these regulations for the land being subdivided.

(6) Park dedication determinations (cash or land) are made by the city at the time of presentation of preliminary plats. If land is the required contribution, the property must be deeded to the city at the time of final plat approval. If cash in lieu of land is required, the amount will be determined upon the amounts set forth in this chapter in place at the time of application for final plat and paid as a part of the approval of the final plat.

(7) For purposes of this section, ***FAIR MARKET LAND VALUE*** is defined as the market value of the land within such plat, replat, or subdivision as of the date the preliminary plat, replat, or subdivision is presented to the City Council for approval. The City Assessor must establish values in the same manner as the Assessor determines the market value of the land for tax purposes, excluding, in determining such value, all value added to such land by improvements other than utilities, streets, and other public

improvements serving such land, but including in such determination the highest and best use for which the land can be used under the existing zoning districts.

(8) The city must annually review the here and after stated fees and determine that they are consistent with current "fair market land values." The required park dedication fees must be established after review of current values by the City Assessor, who must advise the City Council of current values for the different zoning classifications.

(9) Land areas dedicated as park land must be based on the comprehensive plan, the Mississippi River Critical Area Plan, or subsequent localized planning studies.

(10) Upon the advice of the City Assessor, the park dedication fees are as established by the fee resolution set forth as an Appendix to this code.

(11) Park land dedication or a cash contribution is not required on an existing residential parcel that is being subdivided if park land dedication on the parcel has previously been satisfied or if a house will remain on the parcel after it has been subdivided. Park land dedication or a cash contribution will be required for any new lots created by the subdivision.

('72 Code, § 345:59) (Ord. 1977-233(A), passed 1-10-77; Am. Ord. 1992-705, passed 9-14-92; Am. Ord. 1996-801, passed 3-25-96; Am. Ord. 1998-887, passed 8-10-98; am. Ord. 1999-905, passed 10-11-99; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2005-1040, passed 6-6-05; Am. Ord. 2006-1061, passed 7-24-06) Penalty, see § 10.99

ROAD NAMING AND HOUSE NUMBERING

§ 151.070 ROAD DESIGNATIONS.

(A) The use of avenue, parkway, trail, drive, boulevard, way, court, terrace and circle suffixes must be used in identifying location and direction of roads.

(B) Roads must be designated as follows:

(1) Roads that run north and south are alphabetical avenues or terraces.

(2) Roads that run east and west are numerical avenues, trails or ways.

(3) Roads that both originate and terminate on the same street, avenue or boulevard, are circles.

(4) Cul-de-sacs (dead ends) are named courts.

(5) A road must have only one name for its entire length.

(6) Two roads must not be named alike, that is, have the same name or have similar sounding names.

(7) The name of a road may change only if the road changes direction 45 degrees or more at the point of deviation.

(8) All private roads must be labeled lanes and must maintain numerical and alphabetical sequence.

(9) Meandering roads must be labeled boulevard, drive or parkway.

(10) If the proposed street is an extension of an existing named street that name must be used. In all other cases the name of any street previously used within the county must not be used, unless such use is consistent with the county or community street naming system.

(11) The above named requirements may be modified in cases where the Fire and/or Police Departments recommend modifications to facilitate their providing for the safety of occupants of the subdivided lands. In some areas, changing the name of a street would confuse rather than assist the Fire and Police Departments.

('72 Code, § 345:61(1))

§ 151.071 HOUSE NUMBERING SYSTEM.

The standard method of assigning house numbers to each side of the street is as follows:

(A) On the east and west avenue, the even numbers to be assigned to the north side of the avenue and the odd numbers assigned to the south side of the avenue.

(B) On the north and south avenue, the even numbers to be assigned to the east side of the avenue and the odd numbers assigned to the west side of the avenue.

(C) On avenues with a deviation of more than 45 degrees from the north-south base line, the even numbers to be assigned to the north side of the avenue and the odd numbers assigned to the south side of the avenue.

(D) On avenues with a deviation of 45 degrees or less from the north side base line, the even numbers to be assigned to the east side of the avenue and the odd number to be assigned to the west side of the avenue.

(E) Circle streets are assigned numbers in staggered sequence to the number sequence of the drive, avenue or parkway on which it originates and terminates.

(F) Dead end roads are assigned numbers as if the road continued through, beginning with the smallest number of sequence at the road origin.

(G) Courts are assigned numbers conforming to the numerical sequence of the drive, avenue or parkway on which it originates.

(H) On a street that deviates 45 degrees or more (measured at the point of deviation) the number sequence will change accordingly.

(I) One-family dwellings and duplexes: one number will be assigned to each residential unit determined by the location of the principal entrance.

(J) Multiple-family dwellings: a number will be assigned to the entire structure with individual numbers or letters assigned to each dwelling unit starting with the number "1." Multiple dwelling units consisting of two or more floors must designate each floor starting from the bottom up in a sequential order.

(K) Hotels and motels: a number will be assigned to the front entrance of the hotel and motel with individual numbers of letters assigned to each unit starting with the number "1."

(L) Business structures: a number will be assigned to each entrance, but only one number per building establishment for each street frontage.

(M) Split lots: a structure located on two or more lots will be assigned a number determined by the location of the fronting entrance measured from the preceding grid line.

(N) Blocks: a structure located on the entire length or width of a grid block will be assigned a number determined by the location of the fronting entrance.

(O) Corner lots: a structure located on a corner lot will be assigned a number determined by the principal entrance. If the structure is so located that it would be considered fronting on either street, then it would be assigned a number determined by the north-south number sequence.

(P) Each principal building or structure must display address numbers. Address numbers must be a minimum of four inches in height. Address numbers must be placed on the structure with an unobstructed view from the street. Numbers must be illuminated, reflectorized or of a contrasting color to the background. Background must maintain a minimum six inch perimeter around numbers.

('72 Code, § 345:61(2)) (Am. Ord. 1974-176(A), passed 12-9-74; Am. Ord. 1977-243(A), passed 4-11-77; Am. Ord. 1979-303(A), passed 11-13-79)

REQUIRED IMPROVEMENTS

§ 151.085 PURPOSE.

M.S. § 462.358, Subd. 2A, authorizes the city to condition approval of the subdivision of property on the construction and installation of certain utilities. The intent of this section is to specifically set out the required improvements which promote and protect the public

health, safety and general welfare. The city reserves the right to require additional improvements if deemed necessary by circumstances and conditions unique to these particular lands. No subdivision of land is allowed unless storm sewer, sanitary sewer and a municipal water supply are constructed to serve the area being divided unless some other ordinance or statute specifically authorizes said division.

('72 Code, § 345:64) (Am. Ord. 1984-447(A), passed 4-9-84)

§ 151.086 LISTED AND DESCRIBED.

Prior to the approval of a final plat by the City Council, the subdivider must have agreed in the manner set forth below to install, in conformity with utility construction plans approved by the City Engineer and in conformity with all applicable standards and ordinances of the City of Brooklyn Park, the improvements on the site, as described in this section as follows:

(A) *Monuments.* Monuments of a permanent character as required by M.S. § 505.02, must be placed at each corner or angle on the outside boundary of the subdivision and pipes or steel rods must be placed at each corner of each lot and each intersection of street center lines.

(B) *Streets and alleys.* The full width of the right-of-way of each street and alley dedicated in the plat must be graded and improved. All streets and alleys must have an adequate sub-base and must be improved with an all-weather permanent surface in accordance with the design standards specified by the Minnesota Department of Transportation Specifications for Highway Construction on file in the office of the City Engineer. Boulevard areas must be sodded including those areas under state and county jurisdiction.

(C) *Curb and gutter.* A concrete curb and gutter must be installed on both sides of each street dedicated in the plat.

(D) *Water supply.*

(1) Water mains must be provided to serve the subdivision by extension of an existing community system. Service connections must be stubbed into the property line and all necessary fire hydrants must also be provided. Extensions of the public water supply system must be designed so as to provide public water in accordance with the standards of the City of Brooklyn Park.

(2) In areas being platted for rural estate development with large lots, as specified in the zoning ordinance, individual wells must be provided on each lot, properly placed in relationship to the individual sewage disposal facilities on the same and adjoining lots. Well location plans must be submitted for approval to the Building Department.

(E) *Sewage disposal.*

(1) Sanitary sewer mains and service connections must be installed to serve all the lots in the subdivision and must be connected to the public system.

(2) In areas being platted for rural estate development with large lots, as specified in the zoning ordinance, individual on-site sewage disposal facilities must be provided for each lot, properly located with reference to the wells on the same and adjoining lots, and the disposal facilities on adjacent lots. The subdivider must have made and submit the results of tests to ascertain subsurface soil, rock and ground water conditions in such a subdivision. Plans for individual on-site facilities must be submitted for the approval of the City Engineer and the Building Department and must comply with all requirements of the Minnesota Department of Health.

(F) *Drainage.* The grade and drainage requirements for each plat must be established by the City Engineer at the expense of the applicant. Every plat presented for final signature must be accompanied by a certificate of the City Engineer that the grade and drainage requirements have been met. In an area not having municipal storm sewer trunk service, the applicant is responsible, before platting, to provide for a storm water disposal plan, without damage to properties outside the platted area, and the storm water disposal plan must be submitted to the City Engineer who must report to the Council on the feasibility of the plan presented. No plat will be approved before an adequate storm water disposal plan is presented to and approved by the City Engineer and City Council. The use of dry wells for the purpose of storm water disposal is prohibited.

(G) *Landscaping.*

(1) Two trees, balled and burlapped, must be planted or exist within the front yard setback of each newly created single family lot and must be at least two and one-half inch caliper as measured in accordance with the most current edition of American Standard for Nursery Stock. Two trees, balled and burlapped, of one and one-half inch caliper may be substituted for one of the required two and one-half inch trees. Trees must not be planted within public rights-of-way except by specific City Council approval.

(2) The city contains a number of cottonwood trees which are weed trees and which have a tuft of cotton hairs on the seed. These tufts of cotton hairs become airborne and float to other properties, fouling up air conditioning units and other mechanical devices which need to breathe, and are a general nuisance. Cottonwood trees or members of the cottonwood tree family which have these tufts of cotton hairs on their seeds must not planted in the subdivision or in the city, and the subdivider is encouraged to remove any such trees which are located within the subdivision.

(H) *Traffic control and street signs.* Traffic control signs pursuant to M.S. § 169.06 and street signs of standard design approved by the City of Brooklyn Park must be installed at each street intersection or at such other locations within the subdivision as designated by the Director of Public Works.

(I) *Shorelines.* Where a subdivision includes any portion of the shoreline of a meandered stream, or river, no less than 5 percent of the portion of the shoreline lying within a subdivision may be dedicated for use by the public along with sufficient land to allow access to a publicly dedicated street. This land may be a part of, or equal to, the percent of land or cash requirement per acre required for dedication as public land under § 151.071 of this chapter.

(J) *Public utilities.* All utility lines for franchised utility services must be placed underground and may be placed in the street right-of-way or adjacent easements. However, first consideration for the placement of all franchised utilities will be within easements along rear lot lines. Allowances are made for appurtenances and associated equipment such as surface mounted transformers, pedestal mounted terminal boxes and meter cabinets. All above-ground equipment associated with the provision of franchised utility services within newly created subdivisions must be screened from ground level view when such equipment is adjacent to and/or visible from a public right-of- way. Live plant material, which at maturity will provide the necessary screening, must be used for this purpose.

(K) *Street lights.* Street lights must be installed per city specifications at all intersections and at other locations as required by the City Engineer. The city strongly encourages the use of decorative lighting fixtures.

(L) *Sidewalks.* All plats with lots or tracts abutting on principal arterials, "A" or "B" minor arterials, Class I and II collectors, or commercial and/or industrial streets must have concrete sidewalks installed on both sides of the dedicated street right-of-way in accordance with city specifications. Sidewalks will be required on one side of the right-of-way of local streets where it is necessary to provide linkages to proposed or existing trail systems or sidewalks, resulting in a continuous pedestrian network within and between subdivisions. However, sidewalks will not be required on residential cul-de-sac streets which do not exceed 600 feet in length.

(M) *Driveways.* In all subdivisions the subdivider must provide concrete or bituminous driveways in accordance with the following standards:

(1) There must be installed a concrete or bituminous driveway extending from the back of the curb or from the edge of the service street to the garage floor or garage floor apron for each lane or lanes of vehicular access to the street. If a building permit is issued and no garage is to be constructed, the concrete or bituminous driveway must be completed to the depth of the front yard setback as established in the zoning code of the city.

(2) No curb or driveway opening into any public street may be made unless the aforesaid construction of concrete or bituminous apron is installed in accordance with the preceding subdivision.

(3) All concrete or bituminous driveways must be constructed in accordance with the city specifications and reference therein to the Minnesota Department of Transportation Specifications for Highway Construction. The plans and specifications are on file in the office of the City Engineer.

(N) *Walkways-pedestrian ways.* Walkways must be incorporated into subdivisions for the purpose of enhancing pedestrian travel through and between subdivisions, to provide linkages to residential sidewalk systems and to enhance the quality of life through their value as residential and recreational amenities. Walkway locations must be determined by the City Council in accordance with these guidelines. Installation of a walkway should be completed by the developer prior to the sale of the abutting properties and designated on the approved plat as a walkway easement. Specifications for location and construction are as follows:

(1) Public walkway to a park or school must be provided at a separation distance of no greater than 1,000 feet from another existing or proposed walkway or sidewalk access. Exact distance is at the discretion of the City Council.

(2) Walkways must be constructed of bituminous or concrete material in accordance with city specifications.

(3) Fencing or shrubs will be considered at the discretion of the City Council.

(4) The unsurfaced area within the walkway easement must be sodded.

(5) The minimum corridor width for all trails and walkways must be at least 30 feet.

(6) Walkways must be maintained by the city in cooperation with the adjacent property owner unless otherwise agreed to as part of an approved conditional use permit development.

(O) *Sodding of single family lots.* All lots for new single family homes must be sodded from the public curb to the rear property line except as follows:

(1) In the R-1 District.

(2) Existing native plant communities. Existing native plant communities and ecosystems maintained in the natural state do not require sod. Native plant communities may be reestablished as a part of site development.

(3) Contiguous, undeveloped areas which have been disturbed during construction and are equal to or larger than one-third of the total size area must be seeded and maintained as a minimum. Disturbed areas less than one-third of the total area must be sodded and maintained. Within these undeveloped areas the following must be sodded: berms, swales, drainage ponds with slopes greater than four to one; and on corner lots all green areas in the yard abutting the public right-of-way from the front street curb to the rear property line and from the side street curb to the existing building setback.

(4) All open areas of the site not sodded or used as gardens must be planted with an approved ground cover. Ground cover must be planted in such a manner as to present a finished appearance and reasonably complete coverage within 12 months after planting with proper erosion control during plant establishment. Exceptions include areas designated as wetland, existing wooded areas or undisturbed areas containing natural vegetation, all of which must be maintained free of foreign and noxious materials as defined in Chapter 97 of this code.

(5) Landscape rock and mulch may be substituted for sod in shrub and flower planting beds and building maintenance strips.

('72 Code, § 345:64) (Am. Ord. 1984-447(A), passed 4-9-84; Am. Ord. 1986-501(A), passed ; Am. Ord. 1992-705, passed 9-14-92; Am. Ord. 2001-961, passed 11-26-01)

§ 151.087 PAYMENT FOR INSTALLATION.

The required improvements to be furnished and installed by the subdivider, which are listed and described above, are to be furnished and installed at the sole expense of the subdivider and at no expense to the city provided, however, that in the case of an improvement the cost of which would, by general policy of the city, be assessed only in part to the improved property and the remaining cost paid out of general tax levy, the City Council may make provision for payment of a portion of the cost by the city. If any improvement installed within the subdivision will be of substantial benefit to lands beyond the boundaries of the subdivision, the City Council may make provision for causing a portion of the cost of the improvement representing the benefit to such lands to be assessed against the same and in such case the subdivider will be required only to pay for such portions of the whole cost of the improvements as will represent the benefit to the property within the subdivision.

('72 Code, § 345:67)

§ 151.088 ENTRYWAY SIGNS; DEDICATION AND MAINTENANCE.

For every plat or subdivision of land in which there is to be placed a permanent entryway identification sign, a homeowners association or similar body shall be established to assume sole responsibility for the construction and maintenance of such sign(s). Estimated costs for sign construction shall be incorporated into the calculation of on-site development bonds.

('72 Code, § 345:68) (Ord. 1992-705, passed 9-14-92; Am. Ord. 2001-961, passed 11-26-01)

§ 151.089 AGREEMENT PROVIDING FOR PROPER INSTALLATION OF IMPROVEMENTS.

(A) Prior to installation of any required improvements, the subdivider must enter into a development contract prepared by the city and must submit the sureties required by § 151.090 of this chapter.

(B) The development contract shall require the subdivider to furnish and construct the improvements at the sole cost of the subdivider and in accordance with the plans and specifications approved by the City Council. The development contract shall provide for sufficient funds to be escrowed to cover the cost of construction. The City Engineer may require the developer to have their contractor or subcontractor coordinate the work to be done under the contract and also coordinate any other work being done or

contracted by the city in the vicinity.

(C) In accordance with the terms of the contract, the subdivider must provide sureties to the city as set forth in § 151.090 of this chapter. A reduction to the sureties prior to the recording of the final plat may be granted to the subdivider, at the subdividers request, based on completion of part or all of the off-site improvements which have been accepted and approved by the city. If any work begins prior to final platting, one-third of the required grading estimate must be posted as a cash bond prior to commencement of any improvements. The time for completion of work must be determined by the City Council upon recommendation of the City Engineer after consultation with the subdivider and must be reasonable in relation to the work to be done, the season of the year, and proper correlation with construction activity in the subdivision.

(D) No reduction in the cash escrow as required by § 151.090 will be made until all items covered in the subdivider's contract have been accepted by the city.

(E) Once the necessary improvements have been completed and approved by the city, the developer shall provide to the city a one year 100% warranty maintenance bond. Said bond shall run from date of acceptance by the city of all construction items.

('72 Code, § 345:70) (Am. Ord. 1994-756, passed 5-9-94; Am. Ord. 2008-1092, passed 8-25-08)

§ 151.090 FINANCIAL GUARANTEE.

The development contract provided by § 151.089 of this chapter must require the subdivider to provide sureties to the city by a cash deposit, certified check, irrevocable letter of credit, or a performance bond as follows:

(A) Required sureties.

(1) *Off-site surety.*

(a) A surety must be provided to the city in a sum equal to 150% the total cost of the improvements as estimated by the City Engineer. Of the total amount, 5% or $2,000, whichever is the greater, must be posted as a cash bond escrow to be held in a non-interest bearing account, and 95% of the total shall be posted as cash, an irrevocable letter of credit, a subdivision bond or a performance bond. This financial security must be automatically renewed and shall not expire until released by the city. These guarantees must be filed with the city prior to release of the final plat for recording.

(b) Items covered by these guarantees must include, but not be limited to, water mains, sanitary sewers, storm sewers, bituminous streets with concrete curb and gutter, street lights, and sidewalks. These financial guarantees are for all of the improvements to be furnished and installed by the subdivider, pursuant to the development contract, and which have not been completed prior to filing of the final plat.

(c) The city is entitled to reimburse itself out of the cash bond escrow for any costs and expense incurred by the city for completion of the work in case of default by the subdivider. Upon completion of the work and termination of any liabilities to the city by the subdivider under the contract, the balance remaining of the cash bond escrow must be refunded to the subdivider.

(2) *On-site surety.*

(a) A surety to the city must be provided by the subdivider in a sum equal to 100% of the amounts established for on-site bonding by the Department of Community Development. Five percent of the total estimates must be posted as a cash bond escrow to be held in a non- interest bearing account, and 95% of the total shall be posted as cash, an irrevocable letter of credit, a subdivision bond or a performance bond. This financial security must be automatically renewed and shall not expire until released by the city. This surety must be filed with the city prior to release of the final plat for recording.

(b) Items covered by this surety must include, but not be limited to, landscaping as required by resolution, mailboxes, utility repair, adjustment and lot grading, as well as costs for any entryway sign. These financial guarantees are for all of the improvements to be furnished and installed by the subdivider, pursuant to the development contract, and which have not been completed prior to filing of the final plat.

(c) The city is entitled to reimburse itself out of the cash bond escrow for any cost and expense incurred by the city for completion of the work in case of default by the subdivider. Upon completion of the work and termination of any liabilities to the city by the subdivider under the contract, the balance remaining of the cash bond escrow must be refunded to the subdivider.

(B) Engineering/administrative escrow.

(1) A special engineering/administrative escrow must be paid in cash to the city, held in a non-interest bearing special subdivider's cash escrow account, and credited to the subdivider. The engineering/administrative escrow must be equal to at least 6½% of the amount of the subdivider's project improvements as estimated by the City Engineer, but not less than $1,000.

(2) Costs of city services, expenses and materials provided in reviewing and processing of the final plat including but not limited to staff time, legal expenses incurred in plat approval, office and field checking, setting grade and drainage requirements, general supervision, staking, inspection, purchase and installation of street identification and traffic control signs, drafting as-built drawings, and all other city staff services performed in the processing of the improvements and plats, and administrative and legal expenses in examining title to the property being developed must be charged to the engineering/administrative escrow account and must be credited to the City of Brooklyn Park.

(3) The Council must promulgate and adopt a set of rules, regulations and fees for services rendered by city personnel, and the rules, regulations and fee schedules must be on file with the City Clerk for inspection. A copy thereof must be furnished upon request to the subdivider. The city must itemize all time, services and materials billed to any subdivider's cash escrow account. The subdivider making the deposit(s) in the subdivider's cash escrow account must, upon request, be furnished a copy of the itemized charges.

(4) If, at any time, the balance in the engineering/administrative escrow account is depleted to less than 5% of the originally required cash escrow amount, the subdivider must deposit additional funds in the account in an amount as determined by the City Manager, sufficient to cover all costs to be incurred by the city in processing the final plat.

(5) If all, or a part, of a development has been completed, inspected and accepted, all cash escrow monies, for that portion accepted by the city, may be reduced by the City Council and full or partial payment be returned to the subdivider. Any balance remaining in the account upon completion of all platting conditions must be returned to the depositor by the Finance Department after all claims and charges thereto have been paid and after approval by City Council.

('72 Code, § 345:73) (Am. Ord. 1985-480(A), passed 3-18-85; Am. Ord. 1991-671(A), passed 2-11-91; Am. Ord. 1994-756, passed 5-9-94; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2008-1092, passed 8-25-08)

§ 151.091 CONSTRUCTION PLANS.

(A) Construction plans for the required improvements conforming in all respects to the standards of the City Engineer and the ordinances of the City of Brooklyn Park must be prepared at the subdivider's expense by a professional engineer who is registered in the State of Minnesota and said plans must contain the seal of the profession engineer.

(B) Such plans together with the quantity of construction items must be submitted to the City Engineer for the City Engineer's approval and estimate of total cost of the required improvements; upon approval they will become a part of the contract required in § 151.089. Reproducible plans approved by the City Engineer plus two prints must all be furnished to the city to be filed by the City Engineer as a record in the Engineering Department. At the inspection, all required improvements on the site that are to be installed under the provisions of this chapter must be inspected during the course of construction by the City Engineer at the subdivider's expense, and acceptance must be subject to the City Engineer's certificate of compliance with the contract.

('72 Code, § 345:76)

§ 151.092 IMPROVEMENTS COMPLETED PRIOR TO THE APPROVAL OF FINAL PLAT.

Improvements within a subdivision which have been completed prior to application for approval of the final plat or execution of the contract for installation of the required improvements, will be accepted as equivalent improvements in compliance with the requirements of § 151.086 only if the City Engineer certifies that the existing improvements conform to applicable city standards.

('72 Code, § 345:79)

VARIANCES

§ 151.100 VARIANCES GENERALLY.

(A) The City Council may grant a variance from the regulations contained in this chapter following a finding that all of the following

conditions exist:

(1) There are unique circumstances or conditions affecting the property, such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the applicant's land.

(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

(3) The granting of the variance will not be detrimental to the public welfare or injurious to the other property in the territory in which the property is situated and will not have an adverse effect upon traffic or traffic safety.

(B) In making this finding, the City Council must consider the nature of the proposed use of the land and existing use of the land in the vicinity, the number of persons who reside or work in the area, and the probable effect of the proposed variance upon traffic conditions in the vicinity.

(C) In granting variances as herein provided, the Council must prescribe conditions that it deems desirable or necessary to protect the public interest. In making a determination, the Council must find that:

(1) The proposed project will constitute a desirable and stable community development.

(2) The proposed project will be in harmony with adjacent areas.

(D) The application for any variance must be made in writing and addressed to the Planning Commission and the City Council and must be submitted to the Department of Community Development. The application must include the specific variances requested, the location of those variances and how it varies from the provisions of the chapter. The written application must be submitted to the Planning Commission for their advice and recommendation and the Planning Commission must report on the provisions set forth above. The Planning Commission must submit their recommendations to the City Council within 60 days after receiving the written application and required exhibits from the Department of Community Development.

('72 Code, § 345:85) (Am. Ord. 1984-447(A), passed 4-9-84)

§ 151.101 FEES.

Applications for variances, subdivisions, or waivers from the subdivision regulations must be accompanied by a fee as established by the City Council and § 151.014 of this chapter.

('72 Code, § 345:86) (Ord. 1972-123(A), passed 8-28-72)

§ 151.102 VARIANCE FOR CERTAIN HOMESTEADS.

(A) *Purpose.* The city has been a leader in the development of planning controls in the metropolitan area. The city was developed and has continued to develop with agricultural lands and large parcels of land located north of 85th Avenue North. The city recognizes that certain parcels and lands were divided and developed prior to the adoption of modern subdivision and zoning ordinances and that certain residents are burdened with parcels of land too large for a normal homestead but too small to create a viable or economic agricultural unit. This section regulates parcels of land less than 20 acres. It is determined that parcels of land which meet the following criteria are eligible for a one time variance pursuant to procedures set forth in § 151.100:

(1) Are larger than five acres in size.

(2) Have a homestead constructed prior to January 1, 1974.

(3) Can be divided with a residue parcel at least five acres in size. The residue parcel as herein referred to and described must not be the parcel upon which the homestead is located.

(4) The parcel with the homestead structure must meet the zoning requirements of 13,500 square foot lot with 100 feet of street frontage and setback requirements for the district in which it is located.

(5) No more than one non-conforming use may be created.

(6) Homestead as used herein refers to a structure used as a dwelling and not to the tax status of the parcel.

(B) *Variances and non-conforming use.* Variances granted for the aforedescribed purpose will result in the creation of one non-

conforming parcel containing a structure built prior to January 1, 1974 which meets the aforementioned requirements. The parcel is not considered as non-conforming in non-urban areas but rather than be required to meet all the requirements of the district in which it is located. No more than one variance will be granted for the purposes set forth in this section.

('72 Code, § 345:87) (Ord. 1977-254(A), passed 12-12-77)

CHAPTER 152: ZONING CODE

Editors note:

Resolution 2003-27, passed 1-27-03, corrected minor wording to the codified version of the zoning code.

Section

RESIDENTIAL PERFORMANCE STANDARDS

Establishment of Residential Districts

Required Lot Area and Dimensional Requirements for Residential Districts

Permitted, Conditional, and Temporary Uses in Residential Districts

Residential Accessory Uses and Structures

SPECIAL ZONING OVERLAYS

Special Overlay Districts

Flood Hazard Area Overlay

Mississippi River Critical Area

Highway Overlay

ADMINISTRATION

GENERAL PROVISIONS

§ 152.001 TITLE.

Chapter 152 may be known, cited and referred to as the "Brooklyn Park Zoning Code" except as referred to herein, where it may be known as "this chapter."

(Ord. 2000-936)

§ 152.002 PURPOSE.

The intent of this chapter is to protect the public health, safety, and general welfare of Brooklyn Park and its people through the establishment of minimum regulations governing the development and use of property within the city. Such regulations are established to:

(A) Implement the Comprehensive Plan;

(B) Promote orderly development and redevelopment;

(C) Provide adequate light, air and convenience of access to property;

(D) Prevent congestion in the public right-of-way;

(E) Prevent overcrowding of land and undue concentration of structures and population by regulating land, building, setbacks, and density of development;

(F) Provide for the compatibility of different land uses, and protect from incompatible uses;

(G) Provide for the administration of this chapter and any amendments;

(H) Prescribe penalties for violation of such regulations;

(I) Define powers and duties of the City Staff, the Planning Commission, and the City Council in relation to this chapter.

(Ord. 2000-936)

§ 152.003 RELATIONSHIP TO THE COMPREHENSIVE PLAN.

It is the policy of the city that the enforcement, amendment, and administration of this chapter be accomplished consistent with the policies and guidelines contained in the City Comprehensive Plan, as developed and amended from time to time. The City Council recognizes the City Comprehensive Plan as the official policy for the regulation of land use and development in accordance with the policies and purpose of this chapter.

(Ord. 2000-936)

§ 152.004 ZONING MAP.

(A) This chapter divides the city into use districts and establish regulations in regard to location, erection, construction, re-construction, alteration, and use of structures and land. The location and boundaries of the districts established by this text are set forth on the Zoning Map or the Zoning Overlay Map entitled "City of Brooklyn Park Zoning Map" and the "City of Brooklyn Park Zoning Overlay Map," and referred to as the "Zoning Map" and the "Zoning Overlay Map." Both maps must be on file with the City Manager. The Zoning Map and the Zoning Overlay Map and all the notations, references and other information shown on them must have the same force and effect as if fully set forth in this chapter and made a part of this chapter by reference.

(B) The district boundary lines on the Zoning Map are intended to follow street right-of-way lines, the center line of streets, or lot lines unless a 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 may be determined by use of dimensions or the scale appearing on the map.

(C) All Flood Hazard Overlay boundary decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries may be given a reasonable opportunity to present their case to the Board of Appeals and Adjustments and to submit technical evidence as defined in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.005 APPLICATION.

(A) No building, structure or land may be erected, used, relocated or altered except in conformance with this chapter.

(B) The provisions of this chapter must be the minimum requirements. Where the conditions imposed by any other section of City Code are either more restrictive than comparable conditions in this chapter, the provision, rule or regulation which imposes the more restrictive condition, standard, or requirement must prevail.

(C) Any existing use, structure, lot, or development which was legally established but is not in conformance with the provisions of this chapter may be regarded as non-conforming and may continue in existence as provided for in §§ 152.050 through 152.055.

(Ord. 2000-936)

§ 152.006 INTERPRETATION.

(A) Construction of language:

(1) The present tense includes the past and future tenses and the future the present.

(2) The singular number includes the plural and the plural the singular.

(3) The word "must" is mandatory and the word "may" is permissive.

(4) If a word or term defined in this chapter appears in the text, its meaning may be construed as set forth in the definition of the word or term.

(5) All measured distances expressed in feet must be to the nearest tenth of a foot.

(B) Except as otherwise specifically provided for in this chapter, the following may apply to a use not provided for within a zoning district.

(1) If in any zoning district a use is neither specifically permitted nor allowed, the use may be considered prohibited.

(2) The City Council or the Planning Commission, on their own initiative or upon request, may utilize City Staff to conduct a study to determine if a particular use complies with the Comprehensive Plan, what zoning district would be most appropriate, and what standards and conditions may apply to its use.

(3) The City Council may initiate an amendment to this chapter according to procedures established in §§ 152.030 through 152.039 to provide for the particular use under consideration.

(Ord. 2000-936)

§ 152.007 AUTHORITY.

This chapter is enacted pursuant to the authority granted by the Municipal Planning Act, M.S. §§ 462.351 to 462.364, as amended from time to time.

(Ord. 2000-936)

§ 152.008 DEFINITIONS.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. If a word or term defined in this chapter appears in the text of this chapter, its meaning may be construed as set forth below.

ABUTTING. See ***ADJACENT***.

ACCESSORY STRUCTURE. A structure subordinate to, incidental to, and/or serving the principal structure on the same lot. Examples of accessory structures include garages (attached or detached), greenhouses, fences, gazebos, ice-fishing shacks, storage sheds, etc.

ACCESSORY USE. A use subordinate to, incidental to, and/or serving the principal use on the same lot.

ADJACENT. When referring to adjacent lots or land, adjacent means a lot that shares all or part of a common lot line with another lot. For the purposes of this definition, adjacent also includes lots or land separated only by a railroad; utility right-of-way; public street classified as a low-density minor arterial, collector or local street; or a trail corridor less than 50 feet wide.

ANIMAL UNIT. The following animals constitute one animal unit equivalency: one cow, horse, donkey, llama, or burro, or three sheep or emus. Any animal not listed except domestic animals may be considered one animal unit equivalency. Animals are further defined and regulated in other sections of the City Code.

ANIMAL, DOMESTIC. A domestic animal is a common house pet which can be contained within a principal structure throughout the entire year, provided that containment can be accomplished without special modification to the structure requiring a building permit from the city.

ANIMAL, FARM. Animals not typically sheltered within the principal structure throughout the entire year. This includes, but is not limited to, cattle, pigs, sheep, goats, horses and other animals commonly accepted as farm animals in the State of Minnesota.

ANTENNA. Any structure or device used for the purpose of collecting or transmitting communication signals. This includes, but is not limited to, directional antennas, such as panels and microwave and satellite dishes, and omni-directional antennas, such as whip antennas.

APPLICANT. The owner, their agent, or representative having interest in land where an application for city review of any permit, use or development is required by this chapter.

APPLICATION. The form and accompanying documentation required by this chapter or by city policy for city review purposes.

APPROVED PERVIOUS SURFACE. Includes pavers, specialty concrete or the like. It does not include dirt, gravel or crushed rock surfaces.

ARTERIAL. A type of road that is characterized by limited access and a design capacity to move relatively large volumes of traffic in an expedient manner. Arterials are divided into principal arterials and minor arterials based on their access, the traffic volume they

carry and the areas they serve. Examples of principal arterials include freeways or interstate highways such as Interstate 94 and Trunk Highways 169 and 252. Examples of minor arterials include 85th Avenue, Brooklyn Boulevard, County Road 81, and Noble Avenue. The roadway classification system is further defined and illustrated in the City's Transportation Plan.

ASSEMBLY, BANQUET, CONVENTION HALLS, or CONFERENCE CENTER. A facility available for private rental for private events such as weddings, conferences, or meetings. This definition does not include rental for uses that are open to the public such as night clubs or general parties.

ASSISTED LIVING HOUSING. Housing designed for persons who need assistance with their daily living needs including special support services such as meal preparation, housekeeping, limited medical care, and transportation.

AUCTION LICENSED AUTO DEALER. May sell used motor vehicles belonging to others.

BASEMENT. That portion of a building having a minimum of half its floor to ceiling height below the front grade at the front of the dwelling for at least 50% of the foundation footprint. Each room or area in a basement must be at least seven and one half feet from floor to ceiling.

BASEMENT (as applied to flood hazard overlay only). 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.

BB or ***bb***. An abbreviation meaning balled and burlapped and used to describe the root treatment of certain plant materials.

BEEKEEPING. The occupation of owning and breeding of honey bees in colonies, commonly in hives, to produce honey and other products to pollinate plants or to produce bees for sale to other beekeepers.

BERM. A landscaped mound of earth used to separate incompatible uses, screen offsite views of development, mitigate noise impacts and create aesthetic interest.

Figure 152.008.01 Berm

BIG BOX RETAILER. A retail establishment having a gross floor area of 50,000 square feet or greater that offers a variety of general merchandise or specialty products. Typical characteristics may include a free-standing rectangular-shaped building with high ceilings and standardized facades that have no windows or few windows. Big box stores are intended to draw customers on a community scale.

BLACK DIRT (as used for top soil). Organic soils added on top of existing soil that are darker in color and richer in organic materials compared to the existing.

BLUFF. Slopes 12% or greater leading from the river's edge up to an area where the slope is less than 12% and the elevation coincides with that of the larger surrounding area. The top of the bluff must be measured from this final leveling off point. Narrow bands of level area that are in the middle of an otherwise continuous slope greater than 12% do not qualify as the top of the bluff.

BOARDING OR ROOMING HOUSE. A dwelling unit, or portion of a dwelling unit, in which for compensation, lodging and meals are provided to no more than six persons who do not function as a single housekeeping unit.

BODY ART. Physical body adornment using, but not limited to, the following techniques: body piercing, tattooing, branding, body modification and cosmetic tattooing, as regulated by M.S. Chapter 146B and Chapter 123 of this code. This definition does not include practices that are considered part of a medical procedure performed by a state board certified medical or dental personnel, such as, but not limited to, implants under the skin. Such medical procedures may not be performed in a body art establishment. This definition does not include piercing of the outer perimeter of lobe of the ear using pre-sterilized single use stud and clasp ear piercing system.

BREWERY. A facility that manufactures or produces malt liquor as defined in M.S. § 340A.101, Subd. 16.

BROKER LICENSED AUTO DEALER. May arrange for the sale or lease of new or used motor vehicles.

BUILDING. Any structure having a roof supported by columns, walls or other means of support for the shelter or enclosure of persons or property, and when said structure is divided by party walls without openings, each portion of such building so separated may be deemed a separate building. In sections of this ordinance where minimum sized buildings are required, areas which are part of basements, open porches, canopies, awnings, breeze- ways, covered patios, and other similar features are not included in calculating the required building size.

BUILDING AREA. The space remaining on a lot or parcel after the required setbacks and other requirements of this chapter have been applied.

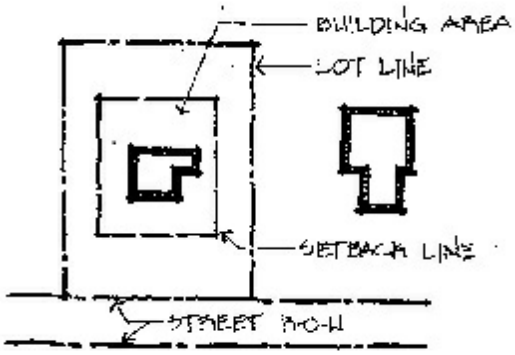


Figure 152.008.02 Building Area

BUILDING HEIGHT. The distance measured from the average proposed ground elevation adjoining the building at the front building line to the top of the cornice of a flat roof, to the deck line of a mansard roof, to a point on the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch-type roof, or to the average distance of the highest gable on a pitched or hip roof.

BUFFER. The use of land, topography, water bodies and vegetation to separate and mitigate the impacts of land uses upon another property.

CARE CENTER/CONVALESCENT HOME. Housing for dependent persons including personal nursing care, meal preparation in a common dining hall, hygiene services, laundry, etc.

CALIPER. The diameter of a tree trunk measured six inches above the ground for trees less than four inches in diameter and 12 inches above the ground for trees more than four inches in diameter.

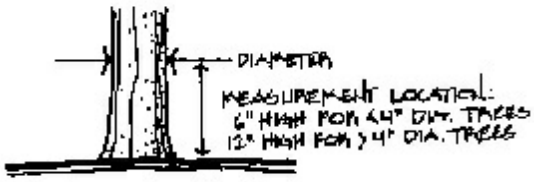


Figure 152.008.04 Caliper Size

CITY CODE. The 1972 Ordinance Code of the City of Brooklyn Park, as amended from time to time. Also referred to as the Code of Ordinances. This zoning ordinance is a part of the City Code.

CLEAR VIEW TRIANGLE. An area around the convergence of two streets or a street and an access driveway where visibility is not impeded.

At the intersection of two streets. The clear view triangle is an area that begins at the intersection of the projected curb lines of two intersecting streets and is measured back along both streets the distance specified in §§ 152.220 through 152.226 and §§ 152.320

through 152.325 and marked with a point. Those points are then connected with a straight line.

At the intersection of an access driveway and a street. The clear view triangle is an area that begins at the intersection of the projected curb line of the access driveway and the private street or public right-of-way and is measured back along both the street and the access driveway the distance specified in §§ 152.220 through 152.226 and §§ 152.320 through 152.325 and marked with a point. Those points are then connected with a straight line.

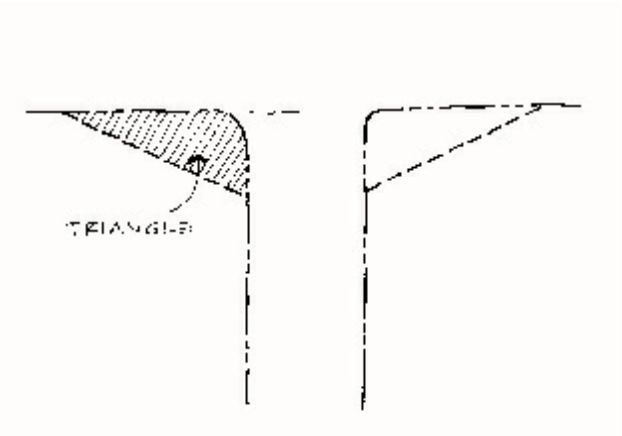


Figure 152.008.05 Clear View Triangle

CLUB.

(1) An incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which:

(a) Has more than 30 members;

(b) Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members;

(c) Is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose.

(2) No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

CLUB, SOCIAL. An establishment not included in the definition of ***CLUB*** that is open to the public or by private membership where the purpose of the establishment is to provide a place for social interaction between patrons.

COCKTAIL ROOM. A facility on or adjacent to the premises of a microdistillery where the on-sale consumption of distilled spirits produced by the distiller is permitted pursuant to M.S. § 340A.22.

COLLECTOR STREETS. A type of road that functions to provide connections between neighborhoods and from neighborhoods to areas with concentrations of businesses. They typically have lower traffic volumes and speeds than arterials, but higher volumes and speeds than local roads. Collectors are divided into those roads that are designed to distribute traffic from major generators or from minor collectors to arterial roads (major collectors) and those roads that are designed to distribute traffic from major collectors or arterials to local streets (minor collectors). Examples of major collectors include Candlewood Drive, Regent Avenue, and West River Road. Examples of minor collectors are Pearson Parkway, Lad Parkway, and Northland Drive. The roadway classification system is further defined and illustrated in the City's Transportation Plan.

COMMERCIAL INDOOR RECREATIONAL FACILITIES. Private recreational facilities operated for profit and open to members and/or the general public including health centers, tennis and racquetball clubs, indoor swimming pools, video arcades (amusement centers), indoor batting cages, pool halls, and the like.

COMMERCIAL LAND USE. A land use activity designated within the Comprehensive Plan that the owner, lessee or licensee of the property carries out for financial gain and involves the sale of goods or services.

COMMERCIAL OUTDOOR RECREATIONAL FACILITIES. Private recreational facilities operated for profit and open to

members and/or the general public including golf courses and driving ranges, miniature golf, riding stables, skating rinks, outdoor swimming pools, archery or trapshooting ranges, batting cages, softball, baseball, volleyball, soccer, or football facilities, and the like.

COMMERCIAL VEHICLES. A vehicle that meets one or more of the following:

(1) A dump truck, step van, construction vehicle or equipment (bobcats, backhoes and the like), semi-tractor, semitrailer, or trailer, tank truck, tow truck, tractor, bus, cargo truck, or any vehicle that has a registered gross weight of more than 12,000 pounds, except the following:

(a) A vehicle that is used for private, personal, or recreational use; is not defined as a commercial vehicle in division (1) above; and is not altered with commercial equipment, such as a 1-ton pickup truck.

(b) A properly licensed recreational vehicle or recreational equipment with sole and consistent use for private recreational purposes.

(2) A vehicle that has commercial equipment added to the vehicle such as a snow plow or other externally attached equipment, except recreational vehicles or recreational equipment used only for private, recreational and residential use.

(3) A limousine or taxi.

(4) A trailer loaded with a commercial vehicle(s) or commercial equipment.

COMPREHENSIVE PLAN. The most recent edition of the document entitled, "The Brooklyn Park Comprehensive Plan" and associated maps adopted by the City Council and as amended from time to time.

COMMUNITY GARDEN. An area of land that is managed and maintained by a group of individuals to grow and harvest food crops and/or non-food ornamental crops such as flowers for personal or group use, consumption or donation.

CONCRETE PRECAST PANELS. A facade material composed of concrete sheets, also commonly referred to as tip-up-tilt-up or poured-in-place panels, etc. For purposes of this chapter, concrete precast panels are divided into the following:

(1) Architecturally textured panels. Smooth concrete precast panels, steel form panels, exposed imprint panels (with exposed aggregate), ribbed, grooved, random relief, or the like, with additional colors, removed patterns, and/or graphics like bands, patterns, and geometric designs that are used to add distinctiveness to building facade.

(2) Industrial grade panels. Panels with the following textures or those deemed similar: raked, corduroy, broomed, or panels exposed aggregate (except exposed imprint panels).

CONDITIONAL USE PERMIT. A permit issued by the City Council to the applicant according to the procedures of this chapter that includes the representations made by the applicant regarding the characteristics and operation of the conditional use and conditions imposed by the City Council.

CRITICAL FACILITIES. Facilities necessary to a community's public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants who may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.

CURRENCY EXCHANGE. Any business, except a bank, trust company, savings bank, savings association, credit union, or industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders, or travelers' checks for a fee. ***CURRENCY EXCHANGE*** does not include a business that provides these services incidental to the person's primary business if the charge for cashing a check or draft does not exceed $1 or one percent of the value of the check or draft, whichever is greater.

DAYCARE FACILITIES. A facility required to be licensed by the state, county or city that provides one or more persons with care, training, supervision, habilitation, rehabilitation or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own dwelling unit. Licensed day care facilities include but are not limited to: family day care homes, group family daycare homes, daycare centers, day nurseries, nursery schools, developmental achievement centers, day treatment programs, adult day care centers, and day services as defined by Minnesota State statute. Residential day care facilities whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statues relating to sex offenses may not be considered a licensed residential day care facility.

DENSITY. The number of dwelling units per acre as regulated by this chapter and the Comprehensive Plan. Density is calculated

by dividing the gross acreage of a property excluding wetlands designated by federal and state agencies and those classified by the Wetland Conservation Act, by the number of dwelling units existing or proposed for the property.

DETACHED TOWNHOUSE. A detached townhouse is a freestanding single family dwelling, built on a single lot, in a neighborhood with a cohesive exterior design, whose grounds and building exteriors are maintained by an association.

DEVELOPMENT. Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations of storage or equipment or materials.

DEVELOPMENT CONTRACT. A legal instrument that defines the representations and obligations of an applicant and the city for the development of property.

DEVELOPMENT PLAN. A document or set of drawings required by the city that depicts elements that contribute to a cohesive planned area or neighborhood.

DISTILLERY. A facility that manufactures or produces distilled spirits as defined in M.S. § 340A.101, Subd. 9.

DISTRIBUTION CENTER. An establishment engaged in the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air, or motor vehicle.

DWELLING UNIT. One or more rooms, designed or intended for occupancy within a building by one family or housekeeping unit with sanitary, culinary and sleeping facilities separate from those of other units and intended for the exclusive use of a single- family or housekeeping unit.

DWELLING, ATTACHED TWO-FAMILY. A building designed for occupancy by two families or housekeeping units with a physical separation between the two dwelling units.

DWELLING, DETACHED SINGLE-FAMILY. A building surrounded by open space containing one dwelling unit that is not attached to any other dwelling by any means.

DWELLING, MULTIPLE FAMILY. A building designed or intended for occupancy by three or more families or housekeeping units, with separate dwelling units either designed one over another and connected by interior or exterior hallways and/or common entries or as townhouse dwellings.

DWELLING, SENIOR INDEPENDENT LIVING. A residential complex or development that is age restricted to people 55 and older without any on-site or staffed nursing or other types of assistance.

DWELLING, TOWNHOUSE. A single structure consisting of not more than six dwelling units each, with no other dwelling or portion of other dwelling directly above or below, with each dwelling unit connected to the other dwelling by a common separation with no opening, except for one unit townhouse structures.

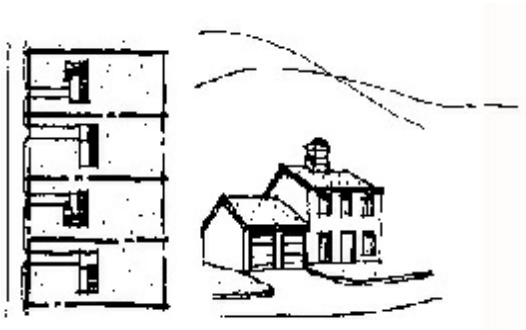


Figure 152.008.06 Detached Dwellings

Figure 152.008.07 Attached Two-Family

Figure 152.008.08 Townhouses

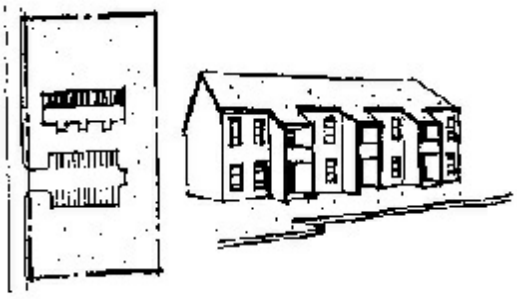


Figure 152.008.09 Multiple Family Dwelling

EASEMENT. A grant of one or more of the property rights by the owner, to or for the use by the public, another person, or entity.

ENTERTAINMENT, LIVE. Disc jockeys, live music, comedy performances, theatrical performances, and the like. This definition does not include mixed martial arts or boxing.

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.

EVAPOTRANSPIRATION. Water lost to the atmosphere from the ground surface, evaporation from the capillary fringe of the groundwater table, and the transpiration of groundwater by plants whose roots tap the capillary fringe of the groundwater table.

FAMILY. An individual or two or more persons each related by blood, marriage, or adoptions, including foster children, living together as a single housekeeping unit; or no more than four unrelated persons maintaining a common household and using and maintaining common cooking and kitchen facilities as distinguished from a group occupying a boarding or rooming house, or licensed day care facility.

FARM. A parcel of land having five acres or more which is under cultivation or a parcel ten acres or more which is fenced and

used as pasture, or a parcel ten acres or more of any combination. No farm may exceed one animal unit per acre in aggregate.

FARM FENCE. A fence as defined by M.S. § 344.02, Subd. 1(a) - (d). An open type fence of posts and wire is not considered to be a structure under §§ 152.510 through 152.522. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are regulated as structures under §§ 152.510 through 152.522 .

FARMERS' MARKET. Outdoor sales of fruits, vegetables, meats, honey, flowers, plants, homemade bakery goods, cheeses, soaps, and other similar products.

FARMING AND CULTIVATION OF AGRICULTURAL PRODUCTS. Agricultural and horticultural uses that are not enclosed or covered by a structure.

FINISHED SQUARE FOOTAGE (MINIMUM). The above grade areas of a house that are planned to be completed under the original building permit, excluding garages or other attached accessory buildings, open porches, breezeways, three season rooms, covered patios and the like. All unfinished areas of residential dwellings must be so noted on residential building plans submitted for permit. "Finished" interior areas of residential buildings must comply with the UBC requirements for finished habitable space and have one or more of the listed materials used on each of the following:

(1) Floors - wood; carpet; tile; rock; brick; linoleum; and similar decorative materials.

(2) Ceilings - sheet rock with paint, texturing, or a similar decorative trim; suspended ceiling systems; tile; heavy timber construction; wood paneling; and similar decorative materials

(3) Walls - sheet rock with paint, wallpaper, or a similar decorative trim; wood or rock paneling; mirrors; heavy timber construction, brick; and similar decorative materials.

FLOOD. A temporary increase in the flow or stage of a stream, lake, or wetland that results in the inundation of normally dry areas.

FLOOD FREQUENCY. The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

FLOOD FRINGE (OR FLOODWAY FRINGE). All the land in a flood plain not lying within a delineated flood way. Land within a floodway fringe is subject to inundation by relatively low velocity flows and shallow water depths. The flood fringe includes at a minimum, the areas designated as zone AE on the Flood Insurance Rate Map outside of the floodway, except as modified on the Zoning Overlay Map.

FLOOD HAZARD AREA. The flood plain consisting of the flood way, the flood fringe, and/or the general flood plain area.

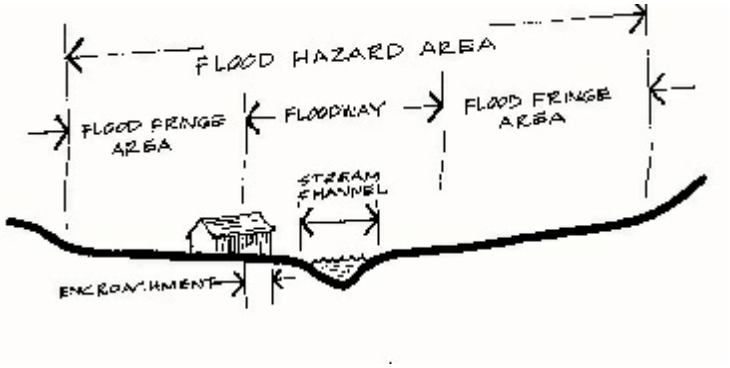


Figure 152.008.10 Flood Hazard Area

FLOOD INSURANCE RATE MAP ("FIRM"). An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOOD PLAIN, GENERAL. A 100 year flood plain area shown on the Flood Insurance Rate Map where flood way and flood fringe boundaries and/or 100 year flood elevations have not been determined. These areas include areas designated as Zone A on the Flood Insurance Rate Map and zone AE areas where a floodway is not shown.

FLOOD PRONE AREA. Any land susceptible to being inundated by water from any source (see ***FLOOD***).

FLOODPROOFING. 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 channel of a natural stream or river and portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream or river. The floodway, at a minimum, includes the floodway areas shown on the Flood Insurance Rate Map and as depicted on the Zoning Overlay Map.

FLOOR AREA, GROSS. The sum of all the gross horizontal areas of the floor(s) of a building or structure from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

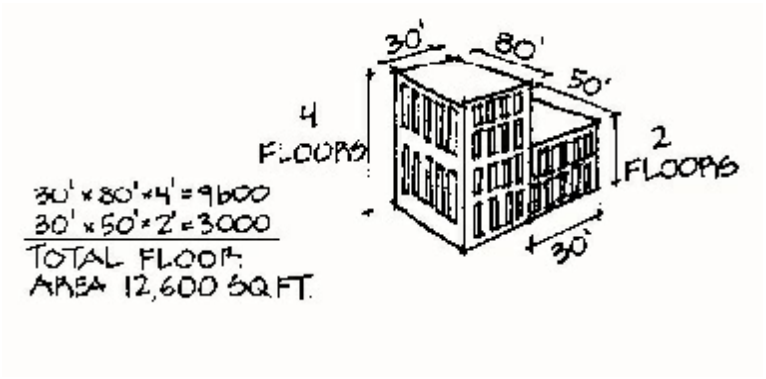


Figure 152.008.11 Gross Floor Area

FLOOR AREA, NET. The total of all floor areas of a building, excluding stairwells and elevator shafts, equipment rooms, unenclosed porches, interior vehicular parking or loading; and all floors below the first or ground floor, except when used or intended to be used for human habitation or service to the public.

FLOOR AREA RATIO (FAR). The gross floor area of all buildings or structures on a lot divided by the area of that lot. Extensive environmentally constrained areas may cause the FAR to be adjusted accordingly.

FORESTRY, PRIVATE. Trees planted or growing on privately owned property.

FORESTRY, PUBLIC. Trees planted or growing on public easements (public right-of-way and public use), parks and public buildings grounds.

FOUNDATION FOOTPRINT. The area of the largest level of a dwelling unit at or near grade as determined by the outside dimensions of a building, excluding attached garages or other attached accessory buildings, decks, patios, three-season porches, etc.

FOUR-SEASON PORCHES. A roofed and enclosed porch, deck, or similar space that is heated or air-conditioned.

FULL SERVICE GROCERY STORE. Retail store at least 60,000 square feet in size, selling a complete assortment of food, food preparation and wrapping materials and household cleaning items. May also include the following products and services: ATMs, automobile supplies, bakeries, books and magazines, coffee shop, dry cleaning, floral arrangements, greeting cards, limited service banks, photo centers, pharmacies, and video rental areas. Some facilities may be open 24 hours a day.

GARAGE. An accessory structure that is primarily used for the parking and storage of vehicles, and storage of goods and equipment owned by the same property owner or resident or the principle structure.

GARAGE SALE. The sale of used personal goods from a private residence or religious institution.

GAS/FUEL TANKS (ABOVE GROUND). A tank used to store fuel used for energy purposes in buildings and structures. This definition does not include portable propane cylinders used with barbeque grills, or the like.

GLARE. The effect produced by the intensity and direction of any artificial illumination sufficient to cause annoyance, discomfort, or temporary loss or impairment of vision.

GREYWATER. Wastewater, containing no fecal matter (human feces), that is generated from domestic activities such as laundry, dishwashing, and bathing and which can be recycled on-site for uses such as landscape irrigation and constructed wetlands.

GREEN ROOFTOPS. Veneers of living vegetation installed atop of buildings that act to manage stormwater by mimicking a variety of hydrologic processes normally associated with open space.

GROUND COVER. Perennial plants that are not classified as noxious weeds as defined elsewhere in the City Code, other than turf grass, normally reaching an average maximum height of not more than 24 inches at maturity.

HARDSURFACE COVERAGE. The amount of a lot covered by building, pavement, concrete or other impervious material.

HEAT ISLAND REDUCTION. Use of vegetative cover to minimize heat islands on hard cover areas and to reduce impact on microclimate and human and wildlife habitat.

HOME OCCUPATION. Any occupation carried out by the occupant of a residential dwelling unit that occurs within the principal or accessory building on the property and does not change the nature of the primary use of the property.

IMPERVIOUS SURFACE. Any surface that prevents absorption of water into the ground. Examples of impervious surfaces include, but are not limited to, cement, asphalt, and paving brick.

INDOOR SALES OF AUTOMOBILES. All sales and display take place within a building.

INTERIM USE. A use of property that is consistent with the city's comprehensive plan and zoning ordinance, which may exist temporarily until a particular date or until an occurrence of a particular event deemed by the City Council.

INTERIM USE PERMIT. A permit issued in accordance with procedures specified in this section, as a flexible device to enable the City Council to assign time limits and conditions to a proposed use after consideration of current or future adjacent uses and their functions.

INTERSECTION (OF TWO STREETS). The point of intersection is the location where the extended curb lines of two streets meet.

IRRIGATION SYSTEM. A permanent, underground watering system designed to transport and distribute water to landscaped areas of property.

LANDSCAPING. Any combination of living plants, (such as grass, perennials, shrubs, vines, hedges, or trees) and non-living material, (such as rocks, pebbles, mulch, decorative walls, fences, or decorative paving materials) used to enhance the appearance and use of the natural and built environment.

LANDSCAPING, ARID. That combination of living plants, (such as grass, perennials, shrubs, vines, hedges, or trees) and non-living material, (such as rocks, pebbles, mulch, decorative walls, fences, or decorative paving materials) used to enhance the appearance and use of the natural and built environment that is designed for needing no additional irrigation above natural rainfall.

LICENSED RESIDENTIAL FACILITY (GROUP HOME). A facility required to be licensed by the state or county that provides one or more persons with 24 hour per day substitute care, food, lodging, training, education, supervision, habilitation, rehabilitation or treatment that cannot be furnished in the person's own home. Licensed residential facilities (Group Homes) are limited to those facilities licensed and/or regulated by the Department of Human Services and the Department of Health. This does not include licensed facilities whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or facilities licensed by the Department of Corrections.

LIVE/WORK UNITS. A residential unit designed and utilized as a shared living environment and as the resident's primary workspace such as an artist studio. Work conducted within the unit does not include employees or regular customer visits.

LOADING DOCK. A platform adjacent to a building at which trucks load or unload cargo.

LOCAL STREETS. A type of road that functions to provide access to adjacent properties and from properties to collectors and/or arterials. Speeds and traffic volumes are typically lower than collectors or arterials. The roadway classification system is further defined and illustrated in the City's Transportation Plan.

LOT or ***PARCEL.*** A portion of land occupied or used, or intended for occupancy or use, for a purpose permitted or conditionally permitted in this chapter and of sufficient size to provide the yards and area required by this chapter.

LOT AREA. The total area within the lot lines of a lot or parcel, excluding any street rights-of- way given by fee dedication.

LOT CORNER. A lot situated at the junction of, and adjacent to two or more intersecting streets.

LOT DEPTH. The average distance between the front lot line and the rear lot line of a lot or parcel.

LOT, DOUBLE FRONTAGE. A lot which is adjacent to two substantially parallel streets, and is not a corner lot.

LOT, FRONT. A lot line abutting the right of way of a public street or property or easement line of a private street. On a corner lot, the shortest of the sides abutting the public street shall be the front. If the dimensions of a corner lot are within 10% of being equal, the front lot line shall be that street designated by the owner. Once it has been established, with the address assigned and the principal entrance determined, the front shall not be reversed.

LOT LINE. A line of record bounding a lot that divides one lot from another lot, a public right-of-way, or private street.

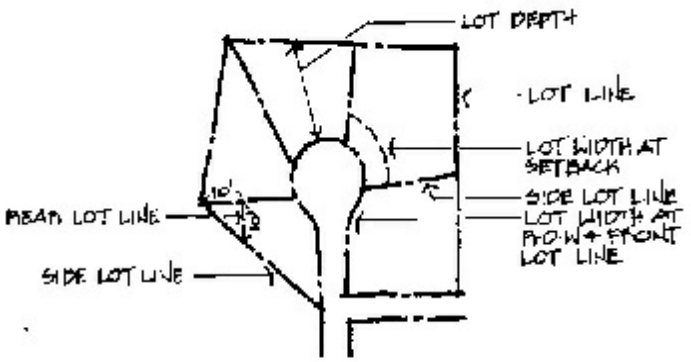


Figure 152.008.12 Lot Lines

LOT, REAR. The boundary of a lot that 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, connecting the side lot lines and parallel to the front lot line.

LOT WIDTH. The distance between the side lot lines as measured along the required front-yard setback.

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; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Federal Regulations, Part 60.3.

LUMINAIRE. A complete lighting unit extending from a support structure consisting of a light source and all necessary mechanical, electrical and decorative parts. The light source, shield and other components do not extend below the cutoff angle for the luminaire. A luminaire does not include a pole or other support.

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. ***MANUFACTURED HOME*** does not include the term ***RECREATIONAL VEHICLE*** .

MICRODISTILLERY. A distillery that manufactures or produces distilled spirits not exceeding 40,000 proof gallons in a calendar year.

MISSISSIPPI RIVER CRITICAL AREA. The Mississippi River and adjacent lands in the Twin Cities region were designated a Critical Area by the State of Minnesota under the Critical Areas Act. Executive Order No. 79-19 established the Mississippi River Critical Area.

MIXED USE DEVELOPMENT. The development of a designated area of land with two or more different land uses.

MOBILE FOOD UNIT. A self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service that is readily movable without disassembling, or as defined in M.S. § 157.15, Subd 9.

MODEL HOME. A home which is similar to others in a new residential development and is temporarily open to regular public inspections for the purpose of selling other homes in the development.

MODIFIED SPLIT ENTRY. A dwelling unit with a front entrance that is midway between the lower level and the upper level.

This type of home has a lower level separated by more than three risers or 24 inches of height difference below the front entry elevation and will not be counted towards the minimum square footage requirements of the home.

MODIFIED TWO STORY. A dwelling unit which has some part of the building that is a minimum of a full two stories in height at, or above the front entry elevation. Not all parts of the home will be a full two stories (or more) in height. There may be a lower level separated by no more than three risers or 24 inches of height difference above or below the front entry elevation that may be counted towards the minimum square footage of the home.

MOTOR HOME. A vehicle that provides temporary living quarters and is self propelled or capable of being towed on public roads. Temporary living quarters within this definition mean:

(1) The vehicle is not used as a residence on private property in this city.

(2) The vehicle is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities away from the property.

(3) The vehicle is not a junk vehicle defined elsewhere in the City Code.

NATIVE SPECIES. Plants that are indigenous to a particular region. Plants are considered native if they were present at the time of the public land survey (1847-1907) that was conducted before and during the early stages of European settlement.

NATURAL AREA. A designated area within a Neighborhood Development Plan where limited human activity is planned and uses are of an undeveloped nature. Examples of natural areas include but are not limited to parks, gardens, recreational uses, trails, nature areas, and open space.

NEIGHBORHOOD COMMERCIAL. Limited commercial areas that provide compact centers for retail sales and services to adjacent neighborhoods.

NEW CONSTRUCTION. Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of §§ 152.510 through 152.522.

NON-CONFORMITIES. Any land use, site, structure, building, lot of record, or sign legally established prior to the effective date of this chapter or subsequent amendment to it which would not be permitted by or is not in full compliance with the regulations of this chapter.

NON-PASSENGER VEHICLE OR EQUIPMENT. A recreational vehicle or equipment that is not self-propelled or cannot receive a vehicle license. This definition does not include junk vehicles as defined elsewhere in the City Code.

NURSING HOME. A state licensed facility used to provide care for aged or infirm persons who require nursing and personal care and related services in accordance with state regulations. A nursing home may be a residential healthcare facility, an intermediate care facility, or a long term care facility.

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 that 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.

OFFICE. Services that are predominantly administrative, professional and/or clerical in nature and conducted within a building or part of a building.

ONE HUNDRED YEAR FLOOD PLAIN. Lands that are inundated by a regional flood.

OPEN SPACE. An area of land that does not contain any buildings except those constructed for recreational or gardening purposes, and is intended for environmental, scenic, or recreational purposes.

ORDINARY HIGH WATER LEVEL. The boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(1) The OHWL is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) For watercourses, the OHWL is the elevation of the top of the bank of the channel; and,

(3) For reservoirs and flowages, the OHWL is the operating elevation of the normal summer pool.

ORNAMENTAL TREE. A self-supporting woody plant or species normally growing to a mature height of at least ten feet but no more than 20 feet.

OUTDOOR SALES AND DISPLAY. An outdoor area designated for sales and display of product carried by the primary business.

OUTDOOR STORAGE. Storage of any property not fully enclosed in a building.

OUTLOT. An unbuildable lot that must be replatted into a lot of record before a building permit can be issued to the property.

OVERSTORY TREE. A self-supporting woody plant or species normally growing to a mature height of at least 20 feet.

PARK, ACTIVE. A park with structures or designated areas for formal recreation activities. Examples of active park areas include but are not limited to golf courses, ballfields, and playgrounds.

PARK, PASSIVE. A park or designated area where limited human activity is planned and uses are of an undeveloped nature. Examples of passive park areas include but are not limited to largely undeveloped parks, gardens, trails, nature areas, and open space.

PARK, PRIVATE. A recreation area, either passive or active, owned and operated by a private group, most commonly a homeowner's association or multiple dwelling tenants.

PARK, PUBLIC. A recreation area, either passive or active, owned or operated by the City of Brooklyn Park, county, state or other governmental unit.

PARK AND RIDE FACILITY. A parking area used for passenger vehicle storage by persons who travel by mass transit facilities or share rides to other locations.

PARKING AREA. A designated portion of a lot used for the temporary storage of motor vehicles on a surface improved by pavement. This definition does not include private residential driveways.

PARKING SPACE. A storage area for a vehicle that has means of access to a public or private street and has an impermeable surface.

PAWNSHOP. A business that lends money on deposit or pledge of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or that lends money secured by chattel mortgage on personal property, taking possession of the property or any part so mortgaged.

PERVIOUS PAVEMENT. A paving system that allows water to infiltrate through the pavement in order to accurately reflect the predevelopment hydrologic cycle and includes, but is not limited to, porous concrete, porous asphalt, porous pavers, open jointed paving blocks, and open cell paving blocks.

PUBLIC & UTILITY FACILITIES. Government and utility facilities and structures, i.e. maintenance buildings, water towers, pumping and lift stations, electrical substations, government buildings, mass transit facilities, and minor cable TV facilities.

PUBLIC UTILITY. Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the general public. For the purpose of this chapter, commercial wireless telecommunication service facilities may not be considered public utility uses, and are defined separately.

RAIN GARDENS/BIORETENTION SYSTEMS. Shallow landscaped depressions commonly located in parking lot islands or adjacent to land cover areas that receive stormwater and filter the runoff or allow it to infiltrate in the soil bed.

RAMBLER. A single-family dwelling with the main living area all on one level measured at or slightly above the front entry elevation.

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 EQUIPMENT. Recreational equipment which does not meet the definition for a vehicle in the City Code, including, but not limited to, boats, pull-behind trailers or campers, ice fishing structures, personal watercraft, and other similar uses that do not necessarily remain on the property during the entire calender year. This term does not include semi-tractor trailers or other

trailers over 15 feet, junk vehicles as defined elsewhere in the City Code, detached snow plowing equipment, or swing sets, trampolines, and other private outdoor recreational equipment.

RECREATIONAL EQUIPMENT, PRIVATE OUTDOOR. Private swimming pools, tennis courts, trampolines, swing sets, other large play equipment, and other similar equipment provided that it is designed for outdoor use and used solely for the private enjoyment of the resident.rivate swimming pools, lawn furniture, tennis courts, trampolines, swing sets, other large play equipment, and other similar equipment provided that it is designed for outdoor use and used solely for the private enjoyment of the resident.

RECREATIONAL VEHICLE. Non-commercial vehicles used for private recreational purposes, including motor homes, campers, dirt bikes, motor-cross cycles, snowmobiles, go-carts, vehicles that are not registered for operation on public rights-of-way, and similar vehicles. This may not include junk vehicles as defined elsewhere in the City Code.

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 the Flood Insurance Study.

REGULATORY FLOOD PROTECTION ELEVATION. An elevation no lower than two feet above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

RELIGIOUS INSTITUTION. A building or campus in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held. Convents, rectories, and the like, may be considered as part of a religious institution campus if located on the same parcel.

REPETITIVE LOSS. Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

RESTAURANT, BREWPUB. An establishment that serves food and hold an intoxicating liquor license and produces in whole or in part beer and/or malt liquor on the premise.

RESTAURANT, CLASS I. An establishment that serves food and is eligible for a 3,2 non- intoxicating beer and wine license without a cover charge.

RESTAURANT, CLASS II. An establishment that serves food and is eligible for an intoxicating liquor license without a cover charge.

RESTAURANT, FAST FOOD. An establishment whose principal business is the sale of food and/or beverages in a ready to consume state for consumption:

(1) Within the restaurant building;

(2) Within a motor vehicle parked on the premises; or

(3) Off the premises as carryout orders, and whose principal method of operation includes the following characteristics: food and/or beverages are usually served in paper, plastic or other disposable containers.

RESTAURANT, TAPROOM. An establishment that serves beer or malt liquor in accordance with M.S. § 340A.301, Subd. 6b, as amended from time to time.

RETAIL BUSINESS. An establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a street, sidewalk, trail corridor of at least 50 feet, snow storage, highway, railroad, transmission cable, pipeline, landscaping and utility structures.

SEAMLESS METAL PANELS. Smooth, prefinished, architectural metal panels without seams or joints that protrude from the surface. This term excludes textured metal, standing seam, pole or "Butler building" metals, any kind of corrugated panel, or metal siding that is residential in appearance or quality.

SEASONAL (TEMPORARY) GARDEN CENTER. A retail use for the sale of primarily plants and other related garden materials such as flower pots, seeds, garden tools, and landscape rock and mulch.

SEASONAL (TEMPORARY) GREENHOUSE. A temporary structure, commonly with glass or durable plastic walls and roof,

designed for the cultivation or exhibition of plants under controlled conditions during the spring and summer seasons.

SCHOOL. A public or private elementary, middle, secondary, post secondary, or vocation school having a course of instruction approved by the Minnesota Board of Education.

SCREENING. A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

SEASONAL (TEMPORARY) GARDEN CENTER. A retail use for the sale of primarily plants and other related garden materials such as flower pots, seeds, garden tools, and landscape rock and mulch.

SEASONAL (TEMPORARY) GREENHOUSE. A temporary structure, commonly with glass or durable plastic walls and roof, designed for the cultivation or exhibition of plants under controlled conditions during the spring and summer seasons.

SENIOR MULTIPLE FAMILY DWELLINGS. Those multiple family dwellings marketed to and predominately occupied by persons 70 years of age or older.

SERVICE BUSINESS. An establishment primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises, including hotels and other lodging places; personal, business, repair, and amusement services; health, legal engineering, and other professional services; educational services; membership organizations; and other miscellaneous services and sales of such goods incidental to the service.

SETBACK. The required minimum space between property lines and buildings, structures, accessory uses, or other features as specifically set forth in this chapter.

(1) Front. The area extending the full width of the lot between the public right-of-way from which the dwelling is addressed and a distance specified by the applicable district.

(2) Rear. The area between the rear lot line and the rear setback line.

(3) Side. The area between the side lot line and the side setback line, bounded by the front yard and rear yard.

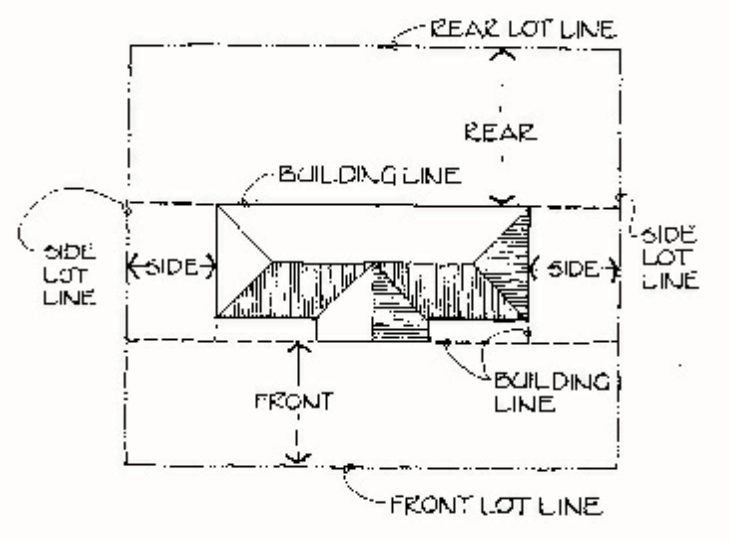


Figure 152.008.13 Setbacks

SEXUALLY ORIENTED BUSINESS. Any one of a number of establishments which offers goods and/or services for sale or rent of a sexual or titillating nature as its primary business and which excludes minors by virtue of age. This may include, but is not limited to bookstores, car washes, entertainment centers, modeling studios, motion picture theaters, cabaret/nightclubs, video rental, etc.

SHORELINE. An area 40 feet wide as measured above the ordinary high water level on both sides of the Mississippi River.

SIGN. All structures, either stationary or movable, containing writing, announcement, declaration, demonstration, display, illustration, insignia, or illumination used to advertise or promote the interest of any person when the same is displayed outside. Signs are further defined and regulated in Chapter 150 of the City Code.

SITE PLAN. A document or group of documents containing text, drawings to scale, maps, photographs, and other materials

intended to present existing and proposed conditions of property development, including topography, vegetation, wetlands, ingress/egress, parking, grading, drainage, utilities, landscaping, buildings, signs, lighting, and other information as may be reasonably required.

SLOPE. The change in elevation on the land. For the purposes of the Critical Area Overlay District, land with a slope of 12% or greater is regulated. A 12% slope means that for every eight feet of horizontal distance, the elevation changes by at least one foot.

SPECIAL FLOOD HAZARD AREA. A term used for flood insurance purposes synonymous with ***ONE HUNDRED YEAR FLOOD PLAIN***.

SPLIT LEVEL. A single-family dwelling unit that is almost entirely a full one-and-a-half stories in height at or above the front entry elevation.

STAGING AREA. An unobstructed paved surface area provided and maintained for the temporary parking, unloading, and maneuvering of commercial vehicles incidental and related to the principal permitted use of the property.

START OF CONSTRUCTION. Includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit's expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STEALTH DESIGN. State-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include, but are not limited to architecturally screening roof-mounted antennas and accessory equipment; integrating telecommunications facilities into architectural elements; nestling telecommunications facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the telecommunications facilities; and designing telecommunications towers to appear other than as towers, such as light poles, power poles, flag poles, and trees.

STORAGE. For the purpose of this chapter storage shall have the meaning of storing, locating, or parking. Storage does not include current property maintenance activities occurring on the property. ***STORAGE*** does not include temporary parking or vehicles in a staging area.

STORY. That portion of a building included between the upper surface of any floor and the upper surface of the next floor above, except that the topmost story must be that portion of the building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, as defined in this chapter, is more than six feet above grade for more than 50% of the total perimeter or is more than 12 feet above grade at any point, and then the basement counts as a story.

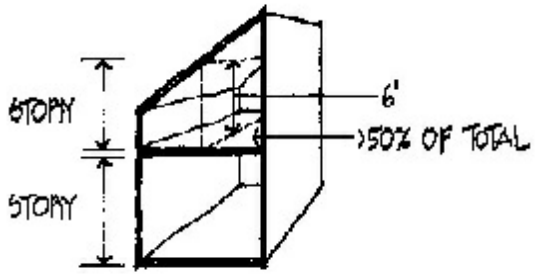


Figure 152.008.14 Story

STREET. A thoroughfare, either owned publically or privately, and accompanying boulevard located between right-of-way or property lines used or intended to be used for passage or travel by vehicles, pedestrians, bicyclists, and related maintenance activities.

Streets may be local, collector, or arterials as defined by the Comprehensive Plan.

STREET TREES. Public forestry that are in public right-of-way on the boulevard or street median.

STRUCTURE. A material or combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

STRUCTURE, PRINCIPLE. The main structure on a parcel of land designed to house the principle use.

SUBSTANTIAL DAMAGE. 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% 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% of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) 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.

(2) 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 chapter, historic structure shall be as defined in Code of Federal Regulations, Part 59.1.

TAPROOM. A facility on or adjacent to the premises of a brewery where the on-sale consumption of malt liquor produced by the brewer is permitted pursuant to M.S. § 340A.301, Subd. 6b.

TELECOMMUNICATIONS FACILITIES. Includes antennas, accessory equipment, and telecommunications towers.

TELECOMMUNICATIONS TOWER OR COMMERCIAL TOWER. A free-standing, self-supporting lattice, guyed, or monopole structure constructed from grade intended to support antennas, except towers used for amateur radio operations.

TEMPORARY PORTABLE STORAGE CONTAINERS. An enclosed portable storage container placed on a residential property for temporary use.

THREE SEASON PORCH. A roofed and enclosed porch, deck, or similar space with windows that is not heated.

TOWER. Any ground or roof mounted pole, spire, structure, or combination taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

TRAILER. A vehicle that is an open-bed style trailer, enclosed trailer, or trailer as defined in M.S. § 169.01, as amended from time to time, or any machine or equipment designed to travel along the ground by use of wheels, treads, runners or slides, and transport persons or property or pull machinery. A trailer by this definition does not include a semi-tractor trailer, commercial vehicle as defined in this chapter, or a trailer with a registered gross weight over 12,000 pounds.

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days. The term ***TRANSIENT MERCHANT*** does not apply to ***MOBILE FOOD UNIT***, as defined in §§ 114.03 and 152.008.

TRANSPORTATION PLAN. A chapter or element of the Comprehensive Plan, as amended from time to time, that describes the existing and planned transportation related facilities and policies of the city.

TRUCK OR MOTOR FREIGHT TERMINAL. A loading dock facility allowing truck freight operators to redistribute loads of their truck fleets at an intermediate transfer point. These facilities are primarily used for staging loads and possess very little, if any, indoor storage area.

TWO STORY. A single-family dwelling unit which is almost entirely a full two stories in height at or above the front entry elevation.

UNDUE HARDSHIP. Undue hardship, as used in connection with the granting of a variance, means that the property in question cannot be put to a reasonable use if used under conditions allowed by the controls defined in this chapter, the plight of the landowner is

due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone may not constitute an undue hardship if reasonable use for the property exists under the terms of the chapter. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems and ability to construct earth sheltered homes when in harmony with this chapter.

USE. The purpose or activity for which a property or structure is designed, arranged, or intended or for which it is or may be occupied or maintained.

USE, CONDITIONAL. A use that may be allowed in a particular zoning district only upon demonstration that the use and its operation will be compatible with the surrounding area and will comply with all standards of this chapter. The city may impose additional conditions above those specified in this chapter in specific instances to protect the public health, safety or welfare and to ensure compatibility with the surrounding area.

USE, PERMITTED. Any use that is allowed by this chapter and subject to the restrictions of the zoning district and this chapter.

USE, PRINCIPLE. The main use of land or buildings as distinguished from accessory uses.

VEHICLE. Any vehicle, motor vehicle, semitrailer, or trailer as those terms are defined in M.S. § 169.01, as it may also be amended from time to time, including pioneer, classic collector and street rod vehicles. It also includes, without limitation, automobile, truck, trailer, motorcycle and tractor.

WETLAND. Poorly drained, environmentally sensitive lands as designated by M.S. § 103G.221 et seq. known as the Wetland Conservation Act, or any other state or federal agency.

WHOLESALE LICENSE AUTO DEALER. May sell vehicles to licensed dealers only with no outdoor display or any storage on site.

WIRELESS COMMUNICATION SERVICE PROVIDER. Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

XERISCAPING. A landscaping method that uses plants that have low water requirements, allowing them to withstand extended periods of drought without irrigation.

YARD. An open space unobstructed from the ground upward with the exception of landscape materials and minor fixtures of a non-structural nature commonly found in a yard. For the purpose of this chapter, front yard, side yard and rear yard shall have the following meanings:

(1) Yard, Front. The area between the front lot line and a line drawn along the front face or faces of the principal structure on the property and extended to the side property lines. Where a lawful existing garage is located closer to the front lot line than the principal structure, the front yard is the area between the front lot line and a line drawn along the front face or faces of the principal structure to the perpendicular line following the accessory structure to the front face of the accessory structure and extended to the side property line. For properties where the front yard definition is not applicable, the city will determine the front yard area. (Figures 1 - 5)

(2) Yard, Rear. The area between the rear lot line and the closest portion of the principal structure and abutting the side and front yard. (Figures 1 - 5)

(3) Yard, Side. The area extending from the front yard to the rear yard along a side lot line measured perpendicularly from the side lot line to the closest point of a structure. (Figures 1 - 5)

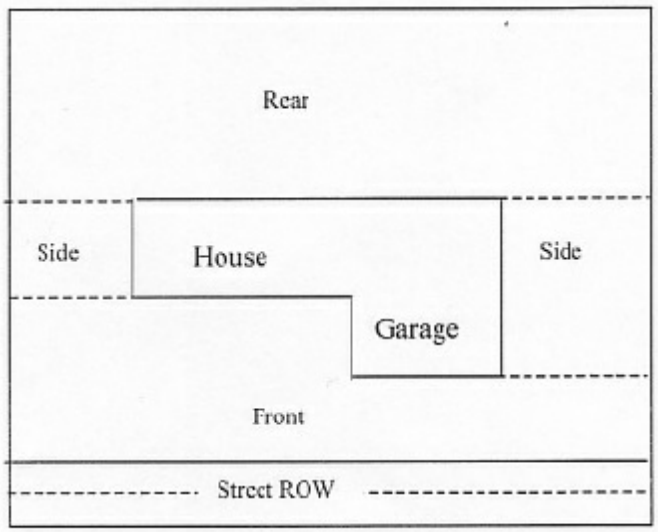


Figure 1. Attached Garage

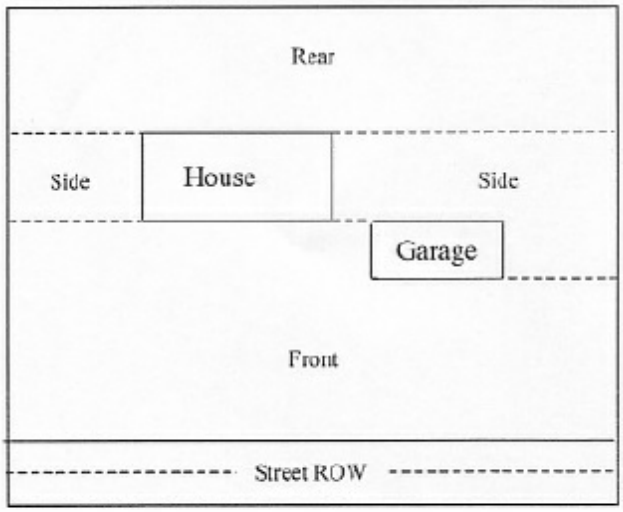


Figure 2. Detached Garage in Front

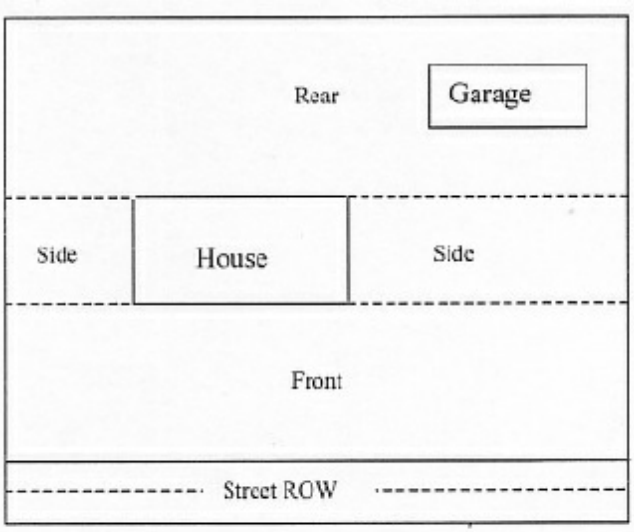


Figure 3. Detached Garage in Rear

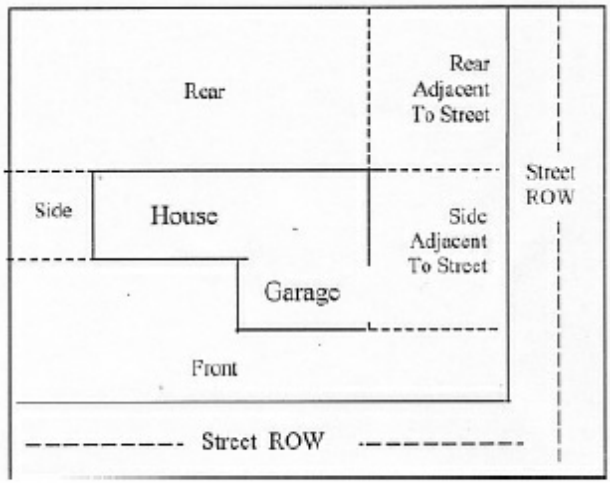


Figure 4. Corner Lot

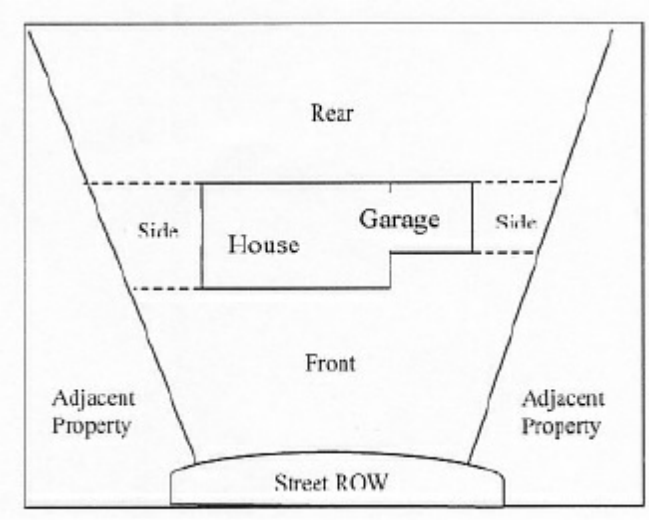


Figure 5. Cul-de-sac

ZERO LOT LINE. A setback where one or more of building's sides rests directly on a lot line and shares a common wall with one or more buildings.

ZONING DISTRICT, UNDERLYING. The official district supporting and further regulated by a zoning overlay district.

ZONING MAP. The official map that is part of this chapter and delineates the geographic boundaries of zoning districts.

ZONING ORDINANCE AMENDMENT. A text change to this chapter or a map change to the official zoning or zoning overlay map that the City Council has authorized.

ZONING OVERLAY MAP. The official map that is part of this chapter and delineates the geographic boundaries of zoning overlay districts.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2004-1012, passed 5-3-04; Am. Ord. 2004-1028, passed 12-13- 04; Am. Ord. 2004-1029, passed 12-13-04; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2005-1046, passed 8-1-05; Am. Ord. 2005-1049, passed 9-26-05; Am. Ord. 2005-1051, passed 11-7-05; Am. Ord. 2006-1058, passed 6-5-06; Am. Ord. 2008-1085, passed 3-24-08; Am. Ord. 2010-1113, passed 4-5-10; Am. Ord. 2010-1122, passed 12-20-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1139, passed 4-16-12; Am. Ord. 2012-1143, passed 5-21-12; Am. Ord. 2014-1177, passed 7-7-14; Am. Ord. 2014-1182, passed 10-6-14; Am. Ord. 2015-1191, passed 5-18-15; Am. Ord. 2016-1209, passed 10-10-16; Am. Ord. 2016-2011, passed 11-14-16)

ADMINISTRATION AND ENFORCEMENT

§ 152.020 PURPOSE.

This subchapter establishes the administration and enforcement powers of this chapter.

(Ord. 2000-936)

§ 152.021 CITY MANAGER.

The City Manager may designate such additional persons as necessary to administer and enforce this chapter. In addition to the duties defined elsewhere in City Code, the duties of the City Manager include:

(A) Oversee the creation and maintenance of permanent and current records of this chapter, including, but not limited to, all maps, amendments, conditional uses, variances, appeals, applications, permits and other records required by law.

(B) Oversee the receiving and forwarding of all applications, including but not limited to, zoning amendments, conditional uses, variances, and appeals.

(C) Interpret the application and provisions of this chapter, which may be appealed to the Planning Commission pursuant to the procedures in §§ 152.030 through 152.039.

(D) Serves as a liaison to the Planning Commission and is responsible for the preparation of application for zoning related matters, preparation and submission of public hearing notices to the official newspaper, preparation of reports and other information for Planning Commission and City Council meetings and enforces all zoning regulations, provisions and conditions pertaining to the approval of applications by the Planning Commission and City Council.

(Ord. 2000-936)

§ 152.022 ENFORCEMENT AND PENALTIES.

(A) *Enforcement*: The City Manager may in the name of the City of Brooklyn Park take any appropriate actions or proceedings to enforce this chapter. These actions may include, but are not limited to:

(1) Conduct periodic inspections of buildings, structures, and use of land to determine compliance with terms of this chapter.

(2) Notify, in writing, any person responsible for violating a provision of this chapter, indicating the nature of the violation and ordering the action necessary to correct it and a time frame for compliance.

(3) Order discontinuance of illegal use of land, buildings, or structures; order removal of illegal buildings, structures, additions or alteration; order discontinuance of illegal work being done; or take any other legal action as may be necessary to insure compliance with or to prevent violation of its provisions, including cooperation with the City Attorney in the prosecution of complaints.

(4) The City Manager may also have the authority to issue stop work orders of any and all site improvement activities when and where a violation of the provisions of this chapter has been documented.

(B) *Penalties*. The City Manager may institute in the name of the City of Brooklyn Park any appropriate legal actions or proceedings against a violator of this chapter. Any person who violates, fails to comply with or assists, directs or permits the violation of any provision of this chapter or who knowingly makes or submits any false statement or document in connection with any application or procedure required by this chapter is guilty of a misdemeanor. Any person who violates, fails to comply with or assists, directs or permits the violation of any performance standard of this chapter must reimburse the city or its agent for the actual cost of the tests, measurements or other procedures necessary to demonstrate such violation.

(Ord. 2000-936)

§ 152.023 DEVELOPMENT CONTRACTS, FINANCIAL GUARANTEES, AND CASH ESCROWS.

(A) In order to guarantee completion of all public off-site and private on-site improvements, including but not limited to: earthwork, erosion control, site utilities, curb, gutter, walks, paving, striping, landscaping, irrigation, sign monuments and site lighting, as shown on the approved site plan or conditions imposed as part of any application granted under this chapter, applicants must provide a financial guarantee and a development contract before the issuance of a building permit.

(B) The development contract must be prepared by the city. The agreement shall define the required work, reflect the terms and guarantee the performance of the work by the applicant.

(C) Any financial guarantee required by the Development Contract guarantees conformance and compliance with the conditions of the application approval and the ordinances of the city. If the conditions are not met, the financial guarantees may be forfeited to the city to cure the default or reimburse the city the cost of enforcement measures.

(D) The amount of the financial guarantee must be established by the city, based upon an itemized estimate of the cost of all required work as documented by the applicant.

(1) An irrevocable letter of credit or similar financial security as approved by the City Attorney, must be posted with the city in the amount of 95% of the approved estimated cost. This financial security must be automatically renewed and shall not expire until released by the city.

(2) The remaining 5% of the approved estimated costs must be posted with the city in cash to be held in a non-interest bearing city account.

(E) An engineering/administrative escrow must be paid and held in a non-interest bearing city escrow account, to be used to cover costs of city services, expenses and materials provided in reviewing and processing the application. This includes, but is not limited to staff time, legal expenses incurred in the application approval, office and field checking, and similar expenses.

(1) For projects that include public off-site improvements, the engineering/administrative escrow must be 6½% of the estimated costs of the project, but not less than $1,000. For projects with only on-site private improvements, the cash escrow account shall be 3% of the estimated project cost but not less than $1,000.

(2) If at any time the balance of the engineering/administrative escrow account is depleted to less than 5% of the originally required cash escrow amount, the applicant must deposit additional funds in the account sufficient to cover all costs to be incurred by the city.

(F) Upon completion and city acceptance of the project, any remaining financial securities must be returned to the depositor by the Finance Department after all claims and charges have been paid and following approval by City Council.

(1) If part of a project has been completed, inspected and accepted by the city, the financial securities posted may be reduced by the city and partial payment be returned to the applicant.

(2) Landscaping improvements may not be deemed complete until the city has verified survivability of all required plantings through two winter seasons, which is defined for the purpose of this chapter as October 31 through May 31.

(G) The city may hold the financial guarantee until the project is completed and approved by the city.

(1) The financial guarantee can only be released by the City Council.

(2) Periodically, the amount of the financial guarantee may be reduced by the City Council based on the projects progress, as determined by the city.

(3) Reduction and release actions will only be initiated after proper request from the applicant.

(H) Failure to comply with the conditions of the application approval, the development contract, or a city ordinance may result in forfeiture of the financial guarantee to the extent necessary to achieve the project's total compliance with the approved site plan.

(Ord. 2000-936; Am. Ord. 2008-1092, passed 8-25-08)

APPLICATIONS AND PROCEDURES.

§ 152.030 PURPOSE.

This subchapter is established to define the procedures and processes for applications for development, redevelopment, and changes in use of property in Brooklyn Park.

(Ord. 2000-936)

§ 152.031 GENERAL PROCEDURES.

(A) *Applications*. The City Manager determines if the required information is complete. If the information is determined to be incomplete, such that a thorough review of the application is not possible, the item may not be placed on the Planning Commission or City Council agenda for consideration until the required information is submitted. The applicant will be notified within ten days following the receipt of the application describing the information that is missing.

(B) *Notification*. All applications for development proposals requiring a public hearing must be advertised to allow informed participation by all interested parties and conform with the applicable state statute. The City Manager may maintain copies of the city policy concerning notification.

(C) *Applications requiring public hearings*. The following applications for development proposals require public hearings:

(1) Approval of Site Plan.

(2) Variance.

(3) Conditional Use Permits and amendments.

(4) Conditional Use Permit revocation.

(5) Zoning Text and Map Amendments (Rezonings).

(6) Preliminary Development Plan for the Planned Unit Development District.

(7) Concept Plan for the Special Zoning Overlays.

(8) Development Plan for Planned Community Development District, the Planned Unit Development District, or Special Zoning Overlays.

(D) *Planning Commission and City Council action.*

(1) The Planning Commission may recommend such actions or conditions relating to the application as it deems necessary to carry out the intent and purpose of this chapter and the Comprehensive Plan.

(2) The City Council may adopt, modify or reject any recommendation of the Planning Commission.

(3) At any time before final action is taken on an application, the applicant may request a continuance of action by the Planning Commission and City Council, or withdraw the application by submitting a letter to the City Manager stating the applicant's desire to do so. Any portion of fees spent in the processing of the application may be retained by the city. The City Manager may establish a time limit on any continuation.

(E) *Appeals*. This division is established to allow those aggrieved by the decision of the City Manager to attempt to remedy the grievance by appealing the decision to the City Council. Any unresolved dispute as to an administrative interpretation of City Code, ordinance, or policy requirements may be appealed to the Planning Commission in its role as the Board of Adjustments and Appeals subject to §§ 31.15 through 31.19 of the City Code. The appeal must be submitted in writing to the City Manager on or before the next application filing deadline for a Planning Commission meeting.

(F) *Re-submitting denied applications.* No application which has been denied wholly or in part may be resubmitted for at least one year from the date of its denial, unless substantial changes have been made which warrant reconsideration, as determined by the City Manager.

(G) *Expiration of action.* Unless otherwise specified by the City Council, the approved applications for projects become null and void by December 31 of the year following the date of its approval, unless the property owner or applicant has begun construction of any building, structure, addition or alteration, or use as evidenced by the issuance of a building permit or grading permit in compliance with the approved plan. The property owner or applicant has the right to submit an application for a time extension in accordance with this chapter.

(H) *Request for time extensions.*

(1) A request for a time extension may be considered by the City Manager. Time extensions must be submitted to the City Manager prior to the expiration of a final action by the City Council. If an action has officially expired, no time extension may be granted. If the time extension request is delayed in the review process and, through no fault of the applicant, cannot be reviewed by the City Manager as anticipated, the request may proceed through the process to final resolution without jeopardy. The applicant may request a maximum of one time extension. Time extensions are valid for a maximum of one year from the original expiration date.

(2) The request may be reviewed with consideration of the following:

(a) The Comprehensive Plan or any other city plan.

(b) City policy changes.

(c) Transportation conditions.

(d) Applicable changes to any city, county, state or federal statutes, rules, requirements, or ordinances.

(e) Park dedication fees and other financial guarantees may be redetermined as required by the current City Code to the date of approval of the extension.

(f) Any negative escrow accounts from previous reviews must be paid and the escrow account must be updated to current

minimum requirements prior to the City Manager's consideration of the extension.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01)

§ 152.032 ADMINISTRATIVE PERMITS.

(A) *Purpose*. This section establishes regulations and procedures for the consideration of activities allowed by administrative permit, and of matters requiring the approval of the City Manager with the goal of protecting the health, safety, and welfare of the citizens of the city.

(B) *Procedure*.

(1) Application for an administrative permit must be filed by the property owner or designated agent with the City Manager on forms to be provided by the city.

(2) The applications for permits or amendments to permits must be accompanied by a non- refundable fee established elsewhere in the City Code.

(3) The City Manager may review the application and related materials for compliance with all applicable requirements of the City Code.

(4) The City Manager may consider possible adverse effects of the proposed events or activities. Evaluation includes (but is not limited to) consideration of the following factors:

(a) Compliance with and effect upon the Comprehensive Plan.

(b) The establishment, maintenance, or operation of the use, event or activity will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.

(c) The use, event, or activity will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

(d) The establishment of the use, event or activity will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

(e) Adequate public facilities and services are available or can be reasonably provided to accommodate the use, event or activity which is proposed.

(f) The use, event or activity may, in all other respects, conform to the applicable regulations of the district in which it is located, as outlined in the applicable sections of this chapter.

(g) The use, event or activity and site conform to the performance standards as outlined in the applicable provisions of this chapter.

(5) The City Manager must make a determination on approval or denial of the administrative permit within 30 days from the date of submission of a complete application.

(6) A written permit may be issued to the applicant when a determination of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances, and the standards of this chapter must be attached to the permit.

(7) Determination of the applications non-compliance with applicable codes, ordinances, and the standards in this division may be communicated to the applicant in writing and the application for the permit may be considered denied; unless, within ten days of the date of such notice, the applicant submits revised plans and/or information with which the City Manager is able to determine compliance.

(8) Unresolved disputes as to administrative application of the requirements of this division may be subject to appeal as defined in this chapter.

(9) An administrative permit may be revoked by the City Manager or by an officer of the Brooklyn Park Police Department if it is determined that the applicant has violated any conditions of the administrative permit, any applicable provisions of the City Code or any applicable provisions of state or federal law.

(C) *Performance standards.* All uses, events, or activities allowed by administrative permit must conform to the applicable standards outlined in the performance standards for the district in which such use, event, or activity is proposed.

(Ord. 2000-936)

§ 152.033 SITE PLAN REVIEW.

(A) *Purpose.* This section establishes Site Plan Review procedures and provides regulations pertaining to the enforcement of site design standards consistent with the requirements of this chapter. These procedures are established to promote high quality development to ensure the long term stability of residential neighborhoods and enhance the built and natural environment within the city as new development and redevelopment activities occur. The specific goals of the city are:

(1) To ensure the application of quality design principles within new and redevelopment projects.

(2) To ensure the active participation and review of site plans by the affected public.

(3) To mitigate to the extent possible, the impact of one development upon another.

(4) To ensure new developments to contain elements of internal and external cohesiveness to promote good neighborhood atmosphere.

(B) *Exemptions to Site Plan Review.* The following are exempt from the Site Plan Review process:

(1) Agricultural structures in the R-1 Urban Reserve District provided they comply with all sections of the City Code.

(2) Accessory structures in residential developments under 120 square feet and 18 feet in height or the height of the principal structure, whichever is less, provided they comply with §§ 152.260 through 152.263.

(C) *Approval required.*

(1) Without first obtaining site plan approval it is unlawful to do any of the following:

(a) Construct a building.

(b) Move a building or structure to any lot within the city.

(c) Expand or change the use of a building or parcel of land or modify a building, accessory structure or site or land feature in any manner that results in a different intensity of use, including the requirement for additional parking.

(d) Grade or take any action to prepare a site for development, except in conformance with the requirements for a grading permit, an approved neighborhood development plan or an approved Conditional Use Permit.

(e) Remove earth, soils, gravel or other natural material from or place the same on a site, except in conformance with the requirements for a building or grading permit or an approved neighborhood development plan or an approved Conditional Use Permit.

(2) *Procedures.* The procedures for application and public hearings for City Council approved Site Plan Review are outlined in § 152.031 of this subchapter.

(3) *Plan modification.* A modification to the plans previously approved through the City Council approved Site Plan Review process, which do not qualify for an administrative Site Plan Review, must follow the City Council approved Site Plan Review procedure.

(4) *Conditions.* The City Council may impose conditions that affect the intent of this chapter to the approval of a Site Plan Review. No building or grading permit can be issued except in compliance with the approved site plan and the conditions of approval.

(D) *Administrative Site Plan Review.*

(1) *Approval criteria.* Site and building plans for projects may be approved by the City Manager in lieu of City Council approval if they meet the following criteria, except as otherwise expressly provided in this chapter:

(a) Residential properties with one dwelling unit per parcel, including those residential properties within the Planned Community Development District, the Planned Unit Development District or a Special Zoning Overly that have already been approved through another procedure and are in compliance with the approved plan.

(b) Sites, buildings and uses that are permitted in the zoning district and do not require any variances from this chapter or any other city code, with the exception of the following:

1. Nonresidential uses in a residential district.

2. Uses with drive-through service.

3. Nonresidential structures in a nonresidential zoning district that are not adjacent to any property zoned or guided for residential development other than property in the Urban Reserve District (R-1).

4. Uses in the Public Institution District (PI).

5. Religious institutions, either free-standing or within a multi-tenant building.

6. Projects that received a Conditional Use Permit, site plan approval, or are located in a PUD or PCDD district, or a Special Zoning Overlay, and are an expansion of no more than 10% of the floor area of an existing building, and/or affect no more than 10% of the site. They may include, but are not limited to, changing parking and circulation routes, changes in buffering or landscaping against abutting adjacent residential, etc. The site and building plans must also be in compliance with the previously approved permit, its conditions and plan requirements.

7. Public and private elementary and secondary schools, including charter schools.

(2) *Procedure.*

(a) Administrative Site Plan Review may be combined with the established building permit process when applicable. The City Manager may impose conditions on the approval to implement the intent of this chapter.

(b) Administrative approval, including all applicable conditions and requirements may be made either in writing separately or attached to the submitted plans. The applicant must fulfill all applicable conditions of the approval prior to the issuance of any permits.

(E) *Evaluation criteria*. The city must evaluate the effects of the proposed site plans. This review may be based upon, but not be limited to, the following criteria:

(1) Consistency with the Comprehensive Plan, the City Code, and this chapter.

(2) Enhancement of the site to create a meaningful and harmonious development.

(3) Creation of a functional and harmonious design for structures and site features, with special attention to the following principals:

(a) A functional relationship of the building(s) on the site to its intended use(s); accessory site improvements, public street and sidewalks, and adjacent uses and structures.

(b) The provision of a desirable environment through building and site design for occupants, visitors and the general community.

(c) A balance of open space and landscaping with site intensity, building height and parking requirements.

(d) The utilization of building materials, textures, colors, and construction details as an expression of design concept and quality.

(e) The functional internal design of vehicular and pedestrian circulation, location of access points to public streets, design of parking areas incorporating landscape elements, and separation of pedestrian and vehicular circulation movements.

(f) The use of landscape design and materials to augment significant native species existing on the site, create an aesthetically pleasing environment, and a sense of character between site elements.

(g) The design of site elements to adequately provide for drainage resulting from development, mitigation of off-site impacts from the development, mitigation of impacts from adjacent property such as noise, poor air quality, and unsightliness.

(4) The height, scale and massing of new buildings and structures should complement similar buildings within the same zoning district in which the application is made.

(F) *Conformance to the Approved Site Plan Review*. All developments must remain in continual conformance with the approved Site Plan Review until or unless amended in compliance with this chapter.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2007-1070, passed 3-26-07)

§ 152.034 VARIANCE.

(A) *Purpose*. The purpose of a variance is to provide for deviations from the requirements of this chapter including restrictions placed on non-conformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of this chapter and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the requirements of this chapter.

(B) *Review Standards*. ***PRACTICAL DIFFICULTIES***, as used in connection with the granting of a variance, means:

(1) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

(2) The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

(3) Granting of the variance will not alter the essential character of the area or neighborhood where the property is located.

(4) Economic considerations alone do not constitute practical difficulties.

(5) There is inadequate access to direct sunlight for a solar energy system.

(C) *Procedure*. The procedures for application and public hearing of a variance request is described in § 152.031.

(D) *Conditions*. The Board of Appeals and Adjustments or the City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No building permit may be issued except in compliance with the conditions of the variance.

(Ord. 2000-936; Am. Ord. 2011-1131, passed 10-24-11)

§ 152.035 CONDITIONAL USE PERMIT.

(A) *Purpose*. The purpose of a Conditional Use Permit is to allow the city discretion in permitting certain uses in particular zoning districts that may be compatible with uses in the district or perceived public needs under certain circumstances. The use must comply with all standards of this chapter and any additional conditions imposed for specific instances to protect the public health, safety or welfare.

(B) *Qualifications*. Only the specific uses classified as conditional in the zoning district where the property is located may qualify for a Conditional Use Permit.

(C) *Procedures*. The procedures for application and public hearing of a Conditional Use Permit are described in § 152.031.

(D) *Review Standards*. The request may address the following factors, although the City Council, the Planning Commission, and city staff has the authority to request additional information from the applicant concerning operational factors pertaining to the proposed use or to retain experts with the consent and at the expense of the applicant concerning operational factors, when necessary to establish performance conditions to effect the intent of this chapter.

(1) *Comprehensive Plan*. Compliance with the Comprehensive Plan, public facilities and capital improvement plans, and all sections of the City Code.

(2) *Traffic*. The generation and characteristics of the traffic associated with the use and its impact on the traffic volumes of and safety associated with driveway location on adjacent roads, sidewalks and trail connections.

(3) *Parking*. The characteristics of the parking area of the use, including the number and design of parking spaces, landscaping, traffic circulation, drainage, and lighting. The city may require additional parking above that required in §§ 152.140 through 152.146.

(4) *City services*. The provision of adequate public facilities and services to the site where the use is proposed and the ability of the existing infrastructure to absorb the additional demand for city services.

(5) *Screening and landscaping*. The ability to screen and buffer incompatible off-site impacts of the proposed use on adjacent property and the surrounding neighborhood. The city may require additional landscaping or screening above that required in the specific zoning district.

(6) *Architectural standards*. The degree that the site or building associated with the proposed use meets or exceed the architectural design and landscaping standards for the district in which it is located. The city may require additional architectural

standards above those required in the specific zoning district.

(7) *Other sections of the city code.* The applicant may be required to submit additional information demonstrating that the development is able to comply with any other applicable section of this chapter or the city code.

(E) *Conditions.* The Planning Commission may recommend and the City Council may impose conditions to the approval of a Conditional Use Permit. No building or grading permit can be issued except in compliance with the conditions of the Conditional Use Permit.

(F) *Duration.* The Conditional Use Permit remains with the property as long as the property and use are in compliance with the conditions attached to the permit by the City Council. A Conditional Use Permit expires if the use has been discontinued for more than 364 consecutive days from the date that the use ceased or the business owner fails to meet the certification requirement of the Conditional Use Permit. The revocation of the Conditional Use Permit may be recorded with the county by the city.

(G) *Certification.* Upon request by the City Manager, the holder of a Conditional Use Permit certifies that the use, building, and site are in conformance with the Conditional Use Permit and city codes, in conjunction with §§ 152.050 through 152.055. The City Manager may maintain copies of the city policy concerning certification.

(H) *Revocation.* If the holder of the permit fails to comply with any of the terms imposed by the Conditional Use Permit, the city may impose penalties or discipline for noncompliance, which may include revocation of the permit, in accordance with the following terms:

(1) *Procedure.* The imposition of any penalty may be preceded by (the notices contained in subdivisions (a) and (c) hereof may be combined):

(a) Written notice of the holder's alleged violation.

(b) The opportunity to cure the violation during a period not to exceed 30 days following receipt of the written notice.

(c) A hearing before the City Council at least 15 days after sending written notice of the hearing. The hearing provides the holder with an opportunity to show cause why the permit should not be subject to discipline.

(2) *Exigent circumstances.* If the city finds that exigent circumstances exist requiring immediate permit revocation, the city may revoke the permit and provides a post revocation hearing before the City Council not more than 15 days after holder's receipt of written notice of the hearing. Following such hearing, the City Council may sustain or rescind the revocation, or may impose such other and further discipline as it deems appropriate.

(3) *Record.* Any decision to impose a penalty or other discipline must be in writing and supported by substantial evidence contained in a written record.

(I) *Amendment.* Holders of a Conditional Use Permit may propose amendments to the approved permit at any time, subject to the procedures of § 152.031, except where administrative Site Plan Review may be granted as outlined in § 152.033. No significant changes in the circumstances or scope of the use may be undertaken without the approval of those amendments by the city. Significant changes include, but are not limited to, hours of operation, number of employees, expansion of buildings, structures and/or premises, different and/or additional signage, and operation modifications resulting in increased external activities and traffic, and the like. The City Manager must determine what constitutes significant change. The City Council may approve significant changes and modifications to Conditional Use Permits, including the application of new or revised conditions.

(Ord. 2000-936)

§ 152.036 ZONING ORDINANCE TEXT AND MAP AMENDMENTS.

(A) *Purpose.* This section specifies the procedures for amendments to the text of this chapter or the associated official zoning map.

(B) *Initiation.* An amendment to the text of this chapter or change in the boundaries or designations in the official zoning map may be initiated by a simple majority of the City Council or Planning Commission. Any person owning property within the city, or their designated agent, may initiate an application to amend the district boundaries or designation on the official zoning map for property in which they have a real estate interest.

(C) *Procedures.* The procedures for application and public hearing of zoning amendment applications are described in § 152.031.

(D) *Effective date.* Any amendment to this chapter adopted by the City Council may be effective 30 calendar days after its publication or at such later date as may be specified in the amendment.

(Ord. 2000-936)

§ 152.037 ZONING OVERLAYS.

(A) *Purpose.* Special zoning overlays are intended to implement development in accordance with the special circumstances affecting a property or an area.

(B) *Procedures.* The procedures for application and public hearing of special zoning overlays are described in § 152.031 and as modified in §§ 152.490 through 152.494. Exceptions to these procedures and performance standards may be described in the specific overlay requirements.

(Ord. 2000-936)

§ 152.038 APPLICATIONS FOR DEVELOPMENT IN PLANNED COMMUNITY DEVELOPMENT DISTRICT.

(A) *Purpose.* The purpose of this district is to encourage, preserve and improve the public health, safety and general welfare that is in compliance with the general intent of the Comprehensive Plan or any applicable area plans.

(B) *Procedures.*

(1) In addition to the other application materials, the applicant provides a general plan of development, consisting, at a minimum, of the components specified in the district provisions and those required for a Conditional Use Permit in compliance with § 152.035. The city has the right to approve, negotiate, or refuse items in the application.

(2) Amendments and revocation must follow the procedures for Site Plan Review and revocations as outlined in § 152.033.

(Ord. 2000-936)

§ 152.039 REQUIRED INFORMATION FOR APPLICATIONS.

The City Manager must maintain copies of city policy concerning the information required for all applications.

(Ord. 2000-936)

NON-CONFORMITIES

§ 152.050 PURPOSE.

It is the purpose of this subchapter to provide for the regulation of non-conformities relating to land use, lots of record, structure and site improvements to accomplish the following:

(A) Recognize the existence of uses, dimensional and intensity characteristics of structures, properties, and site features that were lawful when established before the effective date of this chapter but which no longer meet all ordinance requirements;

(B) Discourage the enlargement, expansion, intensification or extension of any non-conformity or any increase in the impact of a non-conformity on adjacent properties; and,

(C) Encourage the elimination of non-conforming uses or reduction of their impact on adjacent properties.

(Ord. 2000-936)

§ 152.051 CREATION OF NON-CONFORMITIES BY PUBLIC ACTION.

Where there exists as of the date of adoption of this chapter a conforming land use, lot of record, sign or development and a subsequent taking by a governmental body occurs under eminent domain or negotiated sale which renders such land use, lot of record, structure, or site improvement in violation of one or more provisions of this chapter, such land use, lot of record, sign, or structure becomes a legal non-conformity and may be used thereafter only in accordance with the provisions of this section.

(Ord. 2000-936)

§ 152.052 NON-CONFORMING LAND USE.

Non-conforming land uses may continue at the size, intensity, and in the manner of operation existing upon the date it became non-conforming, for as long as it can comply with the following:

(A) There may be no expansion, enlargement, intensification, replacement, structural change, alteration, or relocation of any use or any site element of any non-conforming land use except to make it conforming.

(B) A non-conforming use may not be changed to another non-conforming use.

(C) When any non-conforming use has been changed to a conforming use, it may not later be changed to a non-conforming use.

(D) A non-conforming use may be changed to lessen the non-conformity. Once lessened, the use may not be changed to increase the non-conformity.

(E) No non-conforming use may be re-established if discontinued for a period of 364 continuous days calculated from the date of discontinuance. Following the expiration of this time period, only those uses classified as permitted or conditional, if approved by the City Council, may be allowed by this chapter.

(F) Any non-conforming use that requires a license, permit or other evidence of city approval, initially issued lawfully prior to the non-conformity, may be conducted in accordance with the terms of the city's approval, provided that the use has not been abandoned for a period of more than 364 continuous days. The license, permit or other evidence of city approval ceases at the time the non-conformity ceases to exist.

(G) Removal or destruction of a structure or improvement housing a non-conforming land use to the extent of more than 50% of its estimated market value, excluding land value and as determined by the City Assessor, may terminate the right to continue any non-conforming land use.

(Ord. 2000-936)

§ 152.053 NON-CONFORMING LOT OF RECORD.

(A) Any lot which was legally created but became non-conforming due to changes in area or dimensional requirements as a result of the adoption of this chapter may be subject to the following:

(1) May be combined for tax purposes with a contiguous parcel or parcels, but may not be re-subdivided into a non-conforming lot, even if the division is consistent with the original lot configurations.

(2) If an owner has an interest in more than one lot of record contiguous to other lots of record, all such lots must be combined to meet the requirements of this section or the provisions of the zoning district in which the property is located, whichever is more restrictive. If sufficient contiguous property is held in one ownership to comply, with the provision of the zoning district where the property is located, the zoning district provisions will apply. In no circumstances will there be approval of any proposal for multiple lot developments based upon lots of record, and not conforming with the provisions of the existing zoning district.

(3) A vacant lot may be used for a single-family detached dwelling (if permitted by the district regulations), if the lot area or width measurements meet at least 75% of the requirements for both the lot area and width requirements.

(4) Additions to principal or accessory buildings or structures located on non-conforming lots may be permitted provided that any such addition will meet all minimum setback requirements of the zoning district in which it is located.

(5) If the lot is non-conforming due to public action after the lot was created or has no buildable area outside the floodplain or critical area overlay setbacks, then no variance may be required for the reconstruction of a single-family dwelling on a non-conforming lot that is damaged to the extent of 50% or more of its market value (excluding land value), so long as the replacement dwelling has a

footprint, building height and floor area size equal to that of the destroyed dwelling.

(B) All reconstruction in the Flood Hazard Overlay must be in compliance with Minnesota Rules parts 6120.5000 - 6120.6200. The only acceptable method of elevating the lowest floor, including the basement (as defined for the Flood Hazard Overlay), is with the placement of earthen materials (fill). Other methods require a variance.

(C) Reconstruction commences within one year of the date of the destruction of the original building and reasonable progress must be made in completing the project for this division to be applicable. A building permit must be obtained prior to construction of the new dwelling and the new structure must be constructed in compliance with all other City Codes regulations.

(Ord. 2000-936)

§ 152.054 NON-CONFORMING STRUCTURES.

Expansion of an existing structure, reconstruction of a partially destroyed structure, construction of a new structure, or other intensification of a site may be subject to site and building plan approval in compliance with §§ 152.030 through 152.039 of this chapter.

(A) Non-conforming principal structures may not be enlarged or altered in a way that increases their non-conformity unless in compliance with the following:

(1) Expansion or alteration of buildings found to be non-conforming only by reason of height, setback or lot area may be permitted provided the structural non-conformity is not increased and the expansion complies with the performance standards of this chapter.

(2) Legal non-conforming single-family and two-family dwellings may be expanded or altered to improve the livability provided the non-conformity of the structure is not increased.

(3) The expansion or alteration must follow the requirements of §§ 152.030 through 152.039.

(B) A non-conforming structure which has deteriorated or is damaged to the extent of 50% or more of its market value (excluding land value), as determined by the City Manager, may be replaced or reconstructed only in compliance with this chapter. Any non-conforming structure which is damaged to an extent of less than 50% of its value excluding land, as determined by the City Manager, may be restored to its former foundation footprint, structure height, and floor area if reconstruction begins within six months of the date of documented damage.

(C) Any proposed structure lawfully granted a building permit prior to the effective date of this chapter, which will become non-conforming under a provision of this chapter, may be permitted to continue to completion provided construction is started within six months of the effective date of this chapter and is completed within one year. Once lawfully constructed, the structure becomes a legal non-conforming structure.

(D) If a non-conforming structure is moved for any distance, it loses any legal non-conforming status.

(E) Normal building repair and maintenance necessary to keep a non-conforming structure in sound condition may be permitted.

(F) Alterations may be made to a building containing lawful non-conforming residential units when they will improve the livability and do not increase the number of units or the bulk of the building.

(G) Structures in the designated floodway may be considered non-conforming uses.

(H) All non-conforming structures which are made non-conforming by this chapter may be discontinued in accordance with the following schedule:

(1) One year from the adoption of this chapter, all trash and waste storage structures not in compliance with City Code.

(Ord. 2000-936)

§ 152.055 NON-CONFORMING SITE IMPROVEMENTS.

If non-conforming uses, structures, or buildings suffer damage to at least 50% of the value of the structure excluding land, as determined by the City Assessor, or the property owner applies for a building addition or an accessory structure amounting to 25% of the value of the principal structure, the site must be brought into conformance with the requirements of this chapter. At no time will a

building or grading permit be issued if the proposed construction will increase any non- conformity on the site.

(A) Upon any change in occupancy, non-conforming paved parking areas may continue to be used without improvement if the number of parking spaces supplied remains adequate according to the regulations in this chapter, and the paved surface has not, in the city's judgment, deteriorated so as to be beyond repair. If the parking lot can not be repaired for the new occupancy, then the parking lot surface must be replaced or otherwise brought into compliance with this chapter.

(B) A building permit may be issued for a portion of a multiple occupancy building without bringing the existing site improvements for the entire property into compliance with this chapter so long as no non-conformity is increased. If a multiple occupancy building becomes completely vacant, its site improvements must be brought into compliance with this chapter prior to any future occupancy.

(C) When expansion of existing sites occurs, the newly constructed portion of the site improvements must fully comply with all of the requirements of this chapter, unless the expansion portion of the property contains physical limitations that make full compliance unfeasible, then site plan review shall be required to determine the level of compliance required as approved by the Planning Commission and City Council.

(Ord. 2000-936; Am. Ord. 2012-1133, passed 3-5-12)

GENERAL PERFORMANCE STANDARDS

PRIVATE STRUCTURES AND USES ON OR IN EASEMENTS AND PUBLIC RIGHTS-OF-WAY

§ 152.070 EASEMENTS.

No private buildings, structures or uses may be located in or on any easements, except fences as defined in §§ 152.260 through 152.263 or §§ 152.360 through 152.363 of this chapter; and public or quasi-public facilities regulated by City Franchise, or other provisions of the City Code.

(Ord. 2000-936)

§ 152.071 PUBLIC RIGHTS-OF-WAY.

No buildings, structures or uses may be located in or on any public rights-of-way, other than those specifically mentioned in the city's policy on public easement maintenance and public or quasi-public facilities regulated by City Franchise or other provisions of the City Code.

(Ord. 2000-936)

RELOCATING STRUCTURES

§ 152.080 PURPOSE.

The purpose of this subchapter is to make sure that structures moved into the city, are compatible with the existing neighborhood in which they will be located and comply with City Code and state requirements.

(Ord. 2000-936)

§ 152.081 SITE PLAN REVIEW REQUIRED.

Applicants proposing to relocate a structure from one property to another in the city or move a structure into the city must follow the procedures for Site Plan Review as outlined in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.082 REQUIREMENTS FOR RELOCATING STRUCTURES.

All relocated structures must meet the requirements of the district in which they will be located. In addition, the applicant provides the following:

(A) A report from the Building Official which specifies, at a minimum:

(1) The improvements to the house that may be required for the structure to meet all applicable, current codes, based on an inspection.

(2) If the applicant's submitted plans will successfully meet the required improvements.

(3) If the sewer and water connections have been plugged or discontinued at the curb line or at the main and that all other hazards have been eliminated.

(B) Evidence that all taxes and sewer and water charges have been paid against the property the structure is being relocated.

(C) The applicant must submit evidence that upon completion, the relocated structure will have a fair market value equal to at least 80% of the assessed value of similar buildings within a 500 foot radius.

(D) A signed development contract stating that the applicant has agreed to complete the necessary changes specified by the City Manager within a period of one year, and a performance bond or cash deposit in compliance with §§ 152.020 through 152.023.

(E) Evidence that the applicant has secured the necessary permits or permission for the displacement of any overhead electrical or other wires from the person, association, or corporation that owns, operates, or controls the wires.

(F) Evidence that the applicant or their designated person, firm or corporation engaged in moving structures has a license, in compliance with Section 445, before moving any structure over streets controlled by the City of Brooklyn Park.

(Ord. 2000-936)

TOWER PERFORMANCE STANDARDS.

§ 152.090 PURPOSE.

The Council finds that regulations are necessary to accommodate the communication service facilities to benefit the needs of residents and businesses while protecting the public health, safety, and general welfare of the community. These regulations are necessary to:

(A) Provide for the appropriate locations, compatible with surrounding land uses, for the development of communication facilities to serve the residents and businesses of the city;

(B) Minimize adverse visual effects of communication towers and other facilities through careful design and siting standards;

(C) Avoid potential tower failure damage to adjacent properties through structural standards and setback requirements; and,

(D) Maximize the use of existing and approved towers, buildings, and other structures to accommodate wireless telecommunication devices to reduce the number of towers needed to serve the community.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.091 EXISTING ANTENNAS AND TOWERS.

(A) Previous licensees, owners, operators or secured parties must remove all abandoned or unused towers or associated facilities and equipment within 12 months of the cessation of operations at the site. Cessation of operations means the removal of the antennas from the tower or the cessation of electricity and/or phone service to the site.

(B) All hazardous towers or associated facilities and equipment as defined in the Uniform Building Codes definition of hazardous structures must be removed from the property within a maximum of 60 days of the date of the hazardous determination by the city. The city may require more expeditious removal based on the nature of the hazard.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.092 GENERAL REQUIREMENTS.

(A) No towers may be constructed in the Mississippi River Critical Area Overlay.

(B) All towers must be considered conditional uses in all districts, unless modified by this section.

(C) *Towers and antennas in parks:* In addition to the other conditions outlined in this section, towers and antennas in parks must meet the following additional conditions:

(1) The site must meet the definition of a public park elsewhere in this chapter.

(2) The applicant must obtain a valid lease from the appropriate city, county or state agency.

(D) *Antennas and similar communication devices mounted on roofs, walls, and existing towers (excluding satellite dishes):* The placement of antennas and other communication devices on roofs, walls, and existing towers may be considered a permitted use in all districts zoned for Public Institution (PI), high density residential (R-5, R-6, R-7), business (B-1, B-2, B-3, BP, I), those areas of the PCDD and PUD districts guided for high density residential, commercial or industrial, and on those parcels zoned residential but not used for residential purposes (such as religious institutions), provided they meet the requirements of all applicable City Codes and all of the following:

(1) Roof-mounted antennas must be no more than 15 feet in height.

(2) Roof-mounted antennas and their accessory equipment/buildings must be setback from the edge of the principal building or structure a distance equal to the height of the antenna, equipment or building.

(3) Installation of the antennas requires a building permit. The applicant must submit a report prepared by a qualified professional engineer, licensed by the State of Minnesota, indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment must be indicated.

(4) All other antennas may be considered conditional unless otherwise modified in this chapter.

(5) *Proof of non-interference with public safety telecommunications:* Each application for construction of wireless communication equipment includes a statement from a qualified professional engineer licensed by the State of Minnesota that the construction of the tower, including reception and transmission functions, will not interfere with public safety telecommunications, provided however, that no application requires any statement regarding the environmental effects of radio frequency emissions to the extent that the wireless telecommunication equipment complies with FCC regulations concerning such emissions. Before the introduction of any new service or changes in existing service, telecommunication providers must notify the city and the Hennepin County Sheriff's Radio Systems Manager at least ten calendar days in advance of such changes to allow interferencelevels to be monitored during the testing process.

(E) *Satellite or microwave dishes:* Dishes may be considered permitted in all districts, provided they meet all of the following:

(1) The communication sending and/or receiving dish is accessory to the primary use on the site.

(2) The dish is not located within any of the building setbacks, unless it is one meter or less in diameter and attached to a building.

(3) When placed on a flat roof, the dish must be setback from the edge of the building a distance equal to the height of the dish, unless it is one meter or less in diameter. The height of the dish cannot exceed 15 feet.

(4) Dishes over one meter in diameter may not be placed on a residential roof when visible from a public right-of-way.

(5) When placed on the ground, setbacks from other properties are at least equal to the height of the communication device.

(6) No more than one satellite dish over one meter in diameter may be permitted on any one property zoned for residential uses and two satellite dishes over one meter in diameter are permitted on any one property zoned for business uses.

(7) All other satellite dishes are considered conditional uses, except for the number allowed per parcel, unless otherwise modified in this chapter.

(8) No satellite dishes may exceed five feet in diameter.

(F) *Lighting*: Towers and antennas may not be artificially lighted except if required by the FAA unless they are incorporated into the approved design of the tower, such as light fixtures illuminating ball fields, parking lots, or a similar use.

(G) *Construction and design requirements:* Proposed or modified towers and antennas must meet the following design requirements:

(1) All towers and antennas erected, constructed or located within the city, and all wiring must comply with the requirements set forth in the Minnesota Building Code.

(2) Towers and antennas must be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except when otherwise dictated by federal or state authorities. The telecommunications facilities must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques.

(3) Commercial wireless telecommunication service towers intended primarily for the support of their related antennas must be self-supporting monopoles unless the City Council determines that an alternative design would better blend into the surrounding environment. The use of guyed towers is prohibited.

(H) Permanent platforms or other structures exclusive of antennas that serve to increase off-site visibility are prohibited.

(I) The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

(J) *Accessory buildings and equipment:* All accessory equipment related to towers and antennas must be housed within an existing structure whenever possible. Any new accessory buildings, lockers, and/or ground mounted equipment must meet the following:

(1) They must be architecturally designed to blend in with the surrounding environment, subject to the landscaping and screening requirements of §§ 152.270 through 152.276 and §§ 152.370 through 152.376.

(2) They must meet the minimum setback requirements of the underlying zoning district, unless they are located on the roof of the principal building, in which case they must be setback from the edge a distance equal to their height.

(3) Unless the accessory equipment is mounted on an existing structure or housed within an existing structure, the city may require a security fence around the base of the tower and/or accessory equipment. If required, the security fence must have a maximum opacity of 50% and meet the fencing requirements elsewhere in the City Code.

(K) *Maintenance hours:* Non-emergency maintenance of towers, antennas and associated equipment must be completed between the hours of 7:00 a.m. and 7:00 p.m. for all towers within 1,000 feet of a residential district.

(L) *Collocation requirements.* All towers erected, constructed, or located within the city to support antennas for wireless communication service providers as defined in §152.008, must comply with the following requirements:

(1) The City Council will not approve a proposal for a new tower unless it finds that the antennas cannot be accommodated on an existing or approved tower or building within a one mile search radius (one half-mile search radius for towers 120 feet or less in height) of the proposed tower due to one or more of the following reasons:

(a) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified professional engineer licensed by the State of Minnesota and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment.

(b) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified professional engineer licensed by the State of Minnesota and the interference cannot be prevented.

(c) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function as documented by a qualified professional engineer licensed by the State of Minnesota.

(d) Written documentation that the applicant made a good faith, diligent, but unsuccessful effort to install or collocate the antenna(e) within the defined search radius. The documentation must include the names, addresses and telephone numbers of all owners of other towers, buildings, or other structures of appropriate height, including those on city-owned property.

(e) Other unforeseen circumstances as approved by Council.

(2) Any proposed tower intended to support antennas for wireless communication service providers, as defined in § 152.008, and

its proposed site must be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennas and accessory equipment and comparable antennas and equipment for at least two additional users if the tower is over 100 feet in height and for at least one additional user if the tower is between 60 to 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights. Alternative designs for towers with more than three users may be approved by the City Council, if they prevent the construction of multiple towers and are found to be compatible with the neighborhood.

(3) Any tower proposed at less than 75 feet must be constructed with a foundation adequate to accommodate an additional 20 feet of height to accommodate an additional user. The applicant must provide written evidence that they will allow the extra height added to their tower with a reasonable request for a collocation lease.

(M) *Tower and/or antenna setbacks.* Towers and antennas must meet the setbacks of the underlying zoning district, unless modified by the following:

(1) A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.

(2) In Business Park (BP) and Industrial (I) zoning districts, towers and/or antennas may encroach into the rear setback area, provided that the rear property line abuts another property in the Business Park (BP) or Industrial (I) district and the tower does not encroach upon any easements.

(3) All towers and/or antennas must be set back from planned public rights-of-way as documented in city corridor studies, the Comprehensive Plan, or the appropriate county or state plans, by a minimum distance equal to one half of the height of the tower including all antennas and attachments.

(4) If applicable, setbacks for towers and/or antennas must be determined for the full height of the proposed tower, including extension/expansion height as may be required elsewhere in this chapter.

(5) Towers in residential districts shall be setback a distance equal to four times the height of the structure.

(6) Towers in districts adjacent to residential parcels used primarily or guided for residential purposes shall be setback a distance equal to two times the height of the tower.

(N) *Height.* The height of a tower and/or antenna may be determined by measuring the vertical distance from the tower's point of contact with the ground to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon or attached to other structures, the combined height of the structure and tower must meet the height restrictions of this section. In addition, all towers must meet the following:

(1) In all residential zoning districts on parcels other than those used primarily for residential purposes, the maximum height of any tower, including all antennas and other attachments, may not exceed one foot for each four feet the tower is setback from residential parcels used primarily or guided for residential purposes, up to a maximum height of 125 feet.

(2) In all non-residential zoning districts, the maximum height of any tower, including all antennas and other attachments, may not exceed one foot for each two feet the tower is setback from residential parcels used primarily or guided for residential purposes up to a maximum height of 125 feet.

(O) Preference for identification of tower sites. The following preferences shall be followed in site selection for new towers when collocation is not possible:

(1) Existing buildings or structures;

(2) Public institution sites;

(3) Sites zoned BP or I;

(4) Sites zoned B3 or B4;

(5) Sites zoned B1 or B2;

(6) Other properties consistent with provisions of this subchapter.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.093 TOWERS AND ANTENNAS IN RESIDENTIAL AREAS.

All towers and antennas in the following residential districts: R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4, and R-4A, and in those areas in the PCDD and PUD guided for low and medium residential development must comply to the following:

(A) *Radio and television towers and antennas:* Proposed towers for personal radio and television antennas located on parcels zoned residential and used primarily for residential purposes may be considered permitted if they meet the following conditions:

(1) The tower and/or antennas, including all accessory antennas and other attachments, is (are) at or below the maximum height as regulated elsewhere in the City Code.

(2) It meets the setbacks of the underlying district.

(3) It is located to the rear of the property.

(4) Only one tower is allowed per parcel.

(B) Personal (non-commercial) radio and television towers and antennas that exceed the maximum height defined elsewhere in the City Code and commercial towers shall be considered conditional uses in residential districts. Commercial towers may only be allowed as a conditional use on the following parcels:

(1) Religious institution sites, when constructed in or as part of a steeple, spire, bell tower or similar architectural feature.

(2) Park sites, if conformance with this section are met to the satisfaction of the city.

(3) Government, school, utility, and institutional uses.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.094 ADDITIONAL SUBMITTAL REQUIREMENTS.

In addition to the information required elsewhere in this Code, Conditional Use Permit applications for towers require the following supplemental information:

(A) A report from a qualified professional engineer licensed by the State of Minnesota which:

(1) Describes the tower's capacity, including the number and type of antennas that it can accommodate.

(2) Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas.

(B) A letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

(C) A copy of the relevant portions of a signed lease which require the applicant to remove the tower and associated facilities when they are abandoned, unused or become hazardous may be submitted as a requirement of the Conditional Use Permit before any building permits may be issued.

In the event that a tower is not removed within 12 months, the tower and associated facilities may be removed by the city and the costs of removal, as well as any city staff time spent in processing the removal, may be assessed against the property.

(D) Proposals to erect new towers must be accompanied by any required federal or state agency licenses.

(E) A signed statement that certifies that the proposed tower complies with regulations administered by Federal Aviation Administration.

(F) All applications for towers erected, constructed, or located within the city to support antennas for wireless communication service providers, as defined elsewhere in this chapter, may be required to submit a current area plan map showing their existing towers and the search areas for the towers and antennas for which the Conditional Use Permit application has been filed. The area map must include those towers and antennas (including existing and proposed in the Conditional Use Permit application) within the city and a radius of one mile outside the city's boundaries.

(G) *Proof of non-interference with public safety telecommunications:* Each application for construction of wireless

communication equipment includes a statement from a qualified professional engineer licensed by the State of Minnesota that the construction of the tower, including reception and transmission functions, will not interfere with public safety telecommunications, provided however, that no application requires any statement regarding the environmental effects of radio frequency emissions to the extent that the wireless telecommunication equipment complies with FCC regulations concerning such emissions. Before the introduction of any new service or changes in existing service, telecommunication providers must notify the city and the Hennepin County Sheriff's Radio Systems Manager at least ten calendar days in advance of such changes to allow interferencelevels to be monitored during the testing process.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.095 EVALUATION AND MONITORING.

As a condition of approval for telecommunication facilities the applicant must reimburse the city for its costs to retain outside expert technical assistance to evaluate any aspect of the proposed siting of telecommunications facilities, including but not limited to other possible sites within the city. The owner of a telecommunications facility must provide the city with current, technical evidence of compliance with FCC radiation emission requirements, annually or more frequently at the city's reasonable request. If the owner does not promptly provide the city with satisfactory technical evidence of FCC compliance, the city may carry out tests to ensure FCC radiation compliance using a qualified expert. The owner must reimburse the city for its reasonable costs in carrying out such compliance testing.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

§ 152.096 VARIANCES.

(A) *Initial criteria*. The City Council may grant a variance to the setback, separation or buffer requirements, and maximum height provision of this subdivision based on the criteria set forth elsewhere in this chapter.

(B) *Additional criteria*. In addition to taking the criteria set forth in §§ 152.030 through 152.039 into consideration, the City Council may also grant a variance if the applicant demonstrates with written or other satisfactory evidence that:

(1) The location, shape, appearance or nature of the use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located.

(2) The variance will not create a threat to the public health, safety or welfare.

(3) If the request is for a modification to the setbacks, the size of the parcel upon which the tower is proposed to be located makes compliance impossible, and the only alternative for the applicant is to locate the tower at another site that poses a greater threat to the public health, safety or welfare or is closer in proximity to residentially zoned land.

(4) If the request is for a modification of separation requirements, the applicant must provide technical evidence from an engineer that the proposed tower and antennas must be located at the proposed site in order to meet the coverage needs of the applicant's wireless communications system. The applicant must also submit a landscape plan showing buffers to screen the tower base from being visible from a residential area.

(5) If the request is for modification of the maximum height limit, the applicant must provide evidence documented by a qualified professional engineer licensed by the State of Minnesota, showing the modification is necessary to facilitate collocation of telecommunication antennas and ground equipment to avoid the construction of a new tower, or to meet the coverage requirements of the applicant's wireless communications system.

(Ord. 2000-936; Am. Ord. 2004-1029, passed 12-13-04)

LIGHTING

§ 152.110 PURPOSE.

The purpose of this subchapter is to provide regulations to balance lighting needs for visibility and personal and property safety with the negative impacts of off-site light spill-over.

(Ord. 2000-936)

§ 152.111 PERFORMANCE STANDARDS.

(A) Wall or roof lighting may be used to illuminate the pedestrian walkways, entrance areas, loading docks, and yard areas within 20 feet of the building. No wall or roof lighting may be used to illuminate areas for motor vehicle parking or access.

(B) Any open area used for motor vehicle parking, storage or access must be illuminated with free-standing luminaires.

(C) Free-standing luminaire regulations:

(1) Height maximums, as measured from the average elevation of the finished grade within ten feet of the structure or fixture to the highest point of the luminaire (including the support structure) may be as follows:

(2) Within 500 feet of any property zoned residential: 15 feet including any base or support structures.

(3) Farther than 500 feet from any property zoned residential: 25 feet.

(4) Cut-off angles must be equal to or less than 90°.

(D) Low-pressure sodium fixtures may only be used for: single-family, duplex, and townhouse developments.

(E) Lighting intensity must adhere to the following:

Figure 152.111.01 Required Minimum and Maximum Light Intensities (as measured in foot candles at the ground level)

Use	Minimum Intensity	Maximum Intensity	Maximum Intensity at Property Line
Parking areas for non-residential uses	1	15	.5
Private sidewalks and other pedestrian walkways	10	20	.5
Building entrances and exits	10	20	.5
Exterior storage areas	NA	15	.5
Non-specified uses - For uses not specifically listed above, light requirements may be computed by the City Manager			

(Ord. 2000-936; Am. Ord. 2001-961, passed 11-26-01)

§ 152.112 GLARE.

All lighting must be arranged so as not to produce glare. All properties must be in compliance with the following:

(A) All light sources must be controlled and equipped with lenses, louvers, shields, or prismatic control devices designed to prevent off-site views of the light source.

(B) No flickering or flashing lights except those associated with public safety activities may be permitted.

(C) Light sources that are integrated into a canopy must be designed to be recessed and flush with the ceiling of the canopy, and equipped with a flat lens surface.

(D) Any light or combination of lights which cast light on a public street may not exceed one foot candle as measured from the

public right-of-way.

(E) Any light or combination of lights which cast light on residential property must not exceed one half foot candles as measured from the residential property in question.

(Ord. 2000-936)

§ 152.113 COMPLIANCE.

Any new lighting installed after the effective date of this chapter must be in compliance with the requirements of this chapter. Any lighting in existence before the effective date of this chapter that does not comply with its requirements may be considered legally nonconforming and may be allowed to continue in compliance with §§ 152.110 through 152.114.

(Ord. 2000-936)

§ 152.114 EXCEPTION.

Seasonal lighting may not be regulated by this section except for the provisions in § 152.112(D) and (E).

(Ord. 2000-936)

PEDESTRIAN CIRCULATION (SIDEWALKS)

§ 152.130 PURPOSE.

The purpose of establishing criteria for design of pedestrian circulation facilities is to reduce reliance on the automobile, to provide opportunities for recreational walking throughout the city, and to ensure safe pedestrian movement between properties and from off-street parking areas to building entrances.

(Ord. 2000-936)

§ 152.131 REQUIRED LOCATIONS.

Sidewalks must be required along all existing and future minor arterials (high and low density), all major collectors as designated by the Functional Classification System included in the Comprehensive Plan, and according to the provisions of Chapter 151 of the City Code. Sidewalks may be required on any street where one or more of the following are present as determined by the city:

(A) Concrete curb and gutter has been constructed on the roadway.

(B) Traffic volumes on the road exceed 1,000 vehicles per day.

(C) A roadway connecting a neighborhood to a commercial area, park, school, religious institution or other community oriented facility.

(D) Along any street in a business district.

(E) A multi-family, office, commercial, or industrial use that is expected to generate pedestrian traffic.

(Ord. 2000-936)

§ 152.132 CROSS CIRCULATION REQUIREMENTS.

Sidewalks must be provided within all developments except single- or two-family residential in locations that provide convenient, safe pedestrian access as determined by the city between principal uses and must be as direct as possible to minimize distance and other impediments to walking.

(Ord. 2000-936)

OFF-STREET PARKING, DRIVE AISLE STANDARDS, GARAGE AND DRIVEWAY REGULATIONS

§ 152.140 PURPOSE.

This subchapter establishes off-street parking, drive aisle, and driveway standards to allow for the orderly and adequate storage of vehicles on property, to alleviate and prevent congestion on public rights-of-way, and control the appearance and maintenance of parking areas and surfaces.

(Ord. 2000-936; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2010-1113, passed 4-5-10)

§ 152.141 APPLICABILITY.

All property in the city must comply with the requirements of this subchapter.

(Ord. 2000-936; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2010-1113, passed 4-5-10)

§ 152.142 REQUIRED QUANTITY.

A minimum number of parking stalls is established for all uses and must be provided on the property where the principal use is located as defined in the following tables. For uses not specifically listed below, off-street parking requirements may be established by the City Manager based upon the characteristics of the use. These requirements may be revised upward or downward, when approved by the City Council through the Site Plan Review process, based on verifiable information pertaining to parking. Proof of parking is allowed by § 152.145.

Figure 152.142.01 Minimum Required Parking Spaces for Residential Uses

Use	Minimum Number of Spaces Required
Bed and breakfast establishments and boarding and rooming houses	2 spaces for the principal residential dwelling unit plus 1 space for each rental room
Assisted living housing	.5 spaces for each unit
Nursing home	1 space per 6 patient beds, plus 1 space per employee on the largest work shift
Daycare facilities	No additional spaces required if located in a single dwelling or one unit in a multiple dwelling structure
Dwellings, detached townhouses	2 spaces per unit, plus 1 space for each unit for guest parking (garage required - see § 152.143
Dwellings, single-family detached and two-family attached and residential facilities (licensed for 6 or fewer persons)	2 spaces per unit (garages required - see § 152.143.)
Dwellings, townhouses and multiple	2 spaces per unit, plus 0.5 spaces for each unit for guest parking (garages required -

family dwelling structures	see § 152.143.)
Dwellings, senior independent living	1 space per unit, plus 0.5 space for each unit for guest parking and an addition .5 spaces for demonstrated parking to be paved in the event the development is converted to regular occupancy.
Mobile home parks	2 space per unit, plus 3 per each 6 units as guest parking.
Model houses/temporary real estate offices in residential units	4 temporary spaces per dwelling or office in compliance with § 152.143.
Offices related to leasing, renting and maintenance of multiple family or attached dwellings	1 space for each employee on the largest shift, plus two visitor spaces or one space for each 100 square feet, whichever is greater.
Residential facilities (Licensed for over 6 persons)	1 space for each staff person on the largest shift and 0.5 space for each resident of the licensed capacity

Figure 152.142.02 Minimum Required Parking Spaces for Assembly, Institutional and Community Uses

Use	**Minimum Number of Spaces Required**
Athletic Facilities, Amphitheaters, Stadiums	1 space for each 4 seats (one seat equals 22 inches of pew or bench space) of design capacity and/or 10 seats for each field and/or 20 seats for each ball diamond. A percentage of the parking may be provided in grass lots provided those lots are used not more than 5 times per year.
Cemeteries	1 space for each full-time employee
Religious institutions, clubs, mortuaries, and assembly, banquet, or convention halls	1 space for each 2.5 seats (one seat equals 22 inches of pew or bench space)based on the design capacity in the main assembly area, plus parking figured separately for additional gymnasiums, banquet rooms, meeting rooms, offices, and other multi-use spaces
Schools-Elementary and Junior High	1 space for each classroom plus 1 for each 100 students of design capacity
	1 space for each 5 students of design

Schools-High School, College, Trade, etc.	capacity, plus 1 space for every classroom
Social Clubs	1 space per each person based on the maximum occupancy allowed by the fire code

Figure 152.142.03 Minimum Required Parking Spaces for Business Uses	
Use	**Minimum Number of Spaces Required**
Boat and other recreational equipment and vehicle sales	4 spaces plus 1 additional space for each 500 square feet of gross floor area over the first 1,000 square feet
Bowling alley	5 spaces per alley, plus additional parking calculated separately for restaurants and other related uses
Clinics-medical, dental, chiropractic, etc.	1 space for each staff doctor or dentist or 1 space for each 150 square feet of gross floor area, whichever is greater
Daycare, preschools, except residential	1 space per employee plus one space per 7 children of licensed capacity of the facility
Fuel or service stations	4 spaces plus 3 spaces for each enclosed service stall plus parking figured separately for retail or office space.
Golf courses, driving ranges	4 spaces for each green, plus 1 for each employee on the largest shift, plus 2 spaces for each driving tee on a driving range
Hotel, motel	1 space per rental room and one additional for each 4 rental rooms, plus additional parking calculated separately for banquet rooms, meeting rooms, and restaurants
Hospitals	2 spaces for each patient bed
Manufacturing, fabricating or processing of a product or material	4 spaces plus 1 space for each 400 square feet of gross floor area
Movie theaters	1 space for each 3.5 seats of design capacity
Offices, including government buildings and other professional offices > 6,000 sq ft of floor area	Minimum of 5 spaces with a maximum of 5.5 spaces per 1,000 square feet of floor area

Offices, including government buildings and other professional offices 6,000 sq ft of floor area or less	Minimum of 3.5 spaces, with a maximum of 4 spaces per 1,000 square feet of floor area
Open sales lots	1 space for each 2,000 square feet of land up to the first 8,000 square feet, plus 1 space for each 4,000 square feet up to a parcel of 24,000 square feet, plus 1 space for each 6,000 square feet over 24,000.
Restaurants and delicatessens	1 space for each 40 square feet of gross floor area of dining and bar plus 1 space for each 80 square feet of kitchen area
Restaurants, fast food	1 space per 50 square feet of floor area, plus 1 space per employee on the largest work shift, plus 6 off street stacking spaces per drive-through lane
Restaurants where no interior serving areas are present, such as a drive-in or take out business	1 space for each 15 square feet of building dedicated to patron service and 5 spaces for employees
Retail or service use, unless otherwise specified	1 space for each 200 square feet of gross floor area. No retail or service use may provide parking in excess of 10 percent above the minimum required parking spaces. Such properties may hold aside additional areas for parking which the City Council may approve for conversion if parking spaces are proven to be under provided.
Self-service storage facility	Drive aisles between and around storage buildings must be 30 feet to accommodate through traffic and parking outside individual storage units plus parking figured separately for office and/or on-site security personnel residences, etc
Shopping centers and big-box retailers less than 50,000 sq ft	Maximum of 5 spaces per 1,000 square feet of floor area
Shopping centers and big-box retailers 50,000 sq ft or greater	Maximum of 4 spaces per 1,000 square feet of floor area
Showrooms for display or sales including furniture stores, carpet stores, etc.	1 space per 400 square feet for first 25,000 square feet, plus 1 space per 600 square feet thereafter.
Showrooms for sale of automobiles	5 spaces for customer parking for every acre of total site area, plus 5 spaces for customer service parking for every acre of total site area, plus 1 space for each

	400 square feet of gross floor area for employees.
Skating rinks (indoor), dance halls, miniature golf, ice arenas (indoor), health and fitness clubs, commercial indoor recreational facility over 2,450 square feet, etc.	1 space per 300 square feet of floor area, plus 1 space per employee on the largest work shift
Warehousing (and storage) in structures < 6,000 sf	1 space for each 600 square feet of gross floor area, with a minimum of 5 spaces
Warehousing (and storage) in structures > 6,000 sf	1 space for each 2,000 square feet of gross floor area, with a minimum of 10 spaces

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2004-1028, passed 12-13-04; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2010-1113, passed 4-5-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1139, passed 4-16-12; Am. Ord. 2015-1198, passed 10-12-15)

§ 152.143 GARAGES REQUIRED.

All residential units must be constructed with garages.

(A) Single-family dwellings, two-family dwellings, and licensed residential facilities constructed or moved onto any lot in the city after May 27, 1986 are required to provide a minimum of 480 square feet of garage. Garages constructed in the R-2A/R-2B districts must provide a minimum of 576 square feet of garage space.

(B) *Townhouses.* Each townhouse unit (attached or detached) must be constructed with a garage that is a minimum of 480 square feet in area.

(C) *Multiple family dwelling units.* A minimum of one half of the number of required parking spaces must be enclosed within garages or an underground parking facility.

(D) All garages must have driveway access that meets the requirements of § 152.144.

(Ord. 2000-936; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2010-1113, passed 4-5-10)

§ 152.144 DRIVEWAYS.

(A) All driveways installed on or after November 10, 1989 must be paved with a continuous impervious surface or an approved pervious surface, with the exception of farms, homes, and interim or temporary uses in the R-1 Urban Reserve District. If a driveway that was installed before November 10, 1989 is expanded or enlarged by 20% or more in surface area from the size that existed as of that date, the entire driveway must be paved with a continuous impervious surface or an approved pervious surface. All driveways, regardless of when installed, must be maintained in compliance with Chapter 106 of this code.

(B) No vehicle can be parked so that it blocks a public sidewalk, trail, emergency access way, or a public or private fire hydrant.

(C) All residential driveways must be no wider than 30 feet at the property line.

(D) No residential property may have driveway access to more than one street.

(Ord. 2000-936; Am. Ord. 2004-1012, passed 5-3-04; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2010-1113, passed 4-5-10)

§ 152.145 OFF-STREET PARKING AREA DESIGN REQUIREMENTS.

(A) Reserved.

(B) *Setbacks.* All parking areas created after the effective date of this chapter must be designed and constructed so that no part of any vehicle may ever be nearer than the following:

(1) Side or rear property line adjacent to a residential use - 35 feet.

(2) All other interior side or rear property lines - 5 feet.

(3) From public rights-of-way - 15 feet.

(C) *Design requirements.* All new construction, expansion or modification of parking areas with more than four parking spaces must comply with the following:

(1) Each parking space and drive aisle must be unobstructed and must adhere to the design requirements included in the following table:

Figure 152.145.05 Required Length and Width of Parking Spaces

Angle of Parking Space	Type	Minimum Width of Space at Curb (Non-Retail Uses)	Minimum Width of Space at Curb (Retail Uses)	Minimum Length of Space from Curb	Minimum Drive Aisle Width (One Way)	Minimum Drive Aisle Width (Two Way)
90 degrees	Standard Compact	9' 8'	10' 8'	18' 16'	20' 20'	25' 25'
60 degrees	Standard Compact	10' 4" 8' 6"	11' 6½" 8' 6"	21' 17'	18' 18'	25' 25'
45 degrees	Standard Compact	12' 7" 8' 6"	14' $1\frac{3}{4}$" 8' 6"	19' 8" 17'	15' 15'	25' 25'

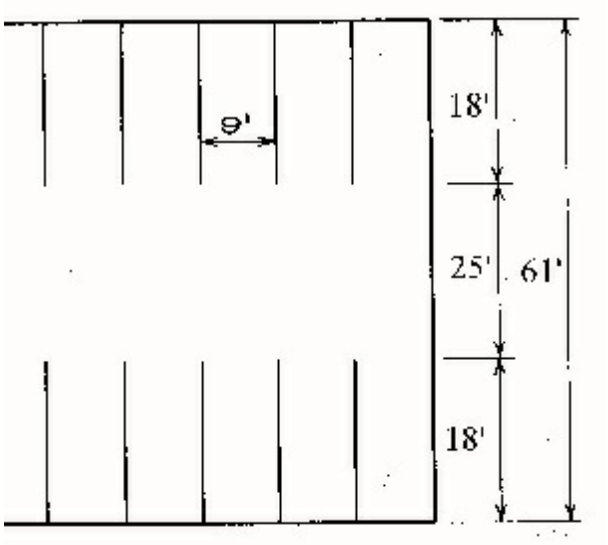


Figure 152.145.06

90 Degrees (Standard)

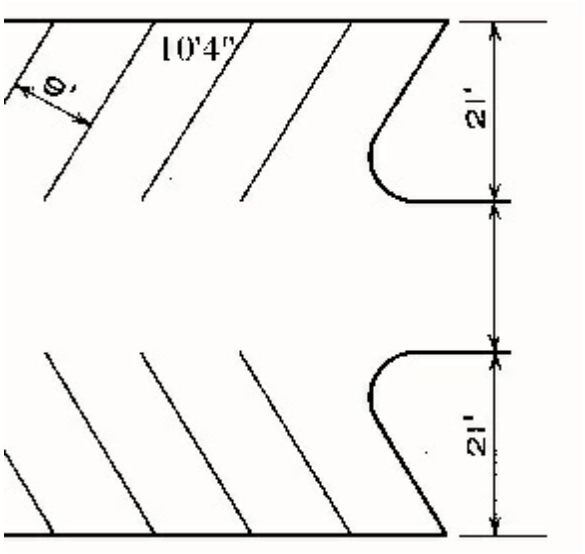


Figure 152.145.07
60 Degrees (Standard)

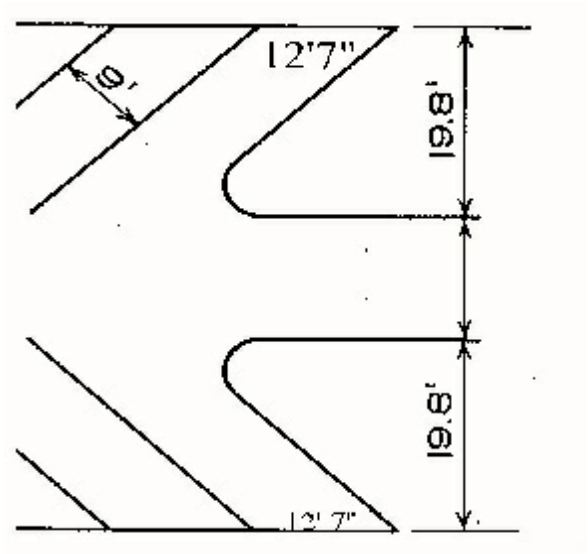


Figure 152.145.08
45 Degrees (Standard)

(2) Parking spaces for the disabled or for specially equipped vehicles for the disabled must comply with the State Building Code requirements and the Americans with Disability Act standards.

(3) Where parking spaces abut perimeter curbs, the length of the spaces may be shortened to account for the car overhang. They shall not be shorted adjacent to sidewalks.

(4) All parking spaces must be designated by clearly visible painted lines.

(5) Non-residential driveway width shall be approved at the time of site plan review.

(6) Required parking stalls may be designed and provided with electric car plug-in devices.

(D) *Curbing required.* Paving areas must be separated with curb and gutter from all designated landscaping areas, curb islands, and at ingress-egress locations to the traveled roadway. Curbing must be constructed of poured-in-place concrete equipped with a gutter and must be of a six inch non-surmountable design. Other curb options may be allowed as approved by the city.

(E) *Paving.* Storage areas and access drives for motorized vehicles or motorized recreational vehicles must be paved with a

continuous impervious surface, except for properties where gravel driveways existed prior to November 10, 1989. This paving requirement includes the entire parking area including parking stalls, aisles and driveways. All areas shall be surfaced with concrete, bituminous, pavers, or pervious paving/paver systems provided appropriate soils and site conditions exist for the pervious systems to function. The City Engineer shall make the final determination if soils are conducive for use of pervious paving/paver systems. The use of pervious paving/paver systems is encouraged for pedestrian walkways, parking areas, overflow parking areas, snow storage areas, within raised medians and islands, emergency vehicle lanes and other low traffic areas. The owner shall provide soils information to demonstrate to the satisfaction of the City Engineer that appropriate conditions exist for the pervious paving/paver systems to function. Owners of property in Business, Industrial and Mixed-Use districts shall enter into a maintenance agreement to ensure ongoing maintenance and operation of all pervious paving/paver systems. This requirement also applies to open sales lots, open rental lots, and outdoor storage or display areas. Other materials such as decorative rock, gravel, sand, or bare soil are prohibited.

(1) Any parking spaces proposed in excess over minimum requirements, as listed in § 152.142, shall use a pervious paver system (provided appropriate soil conditions exist, as determined by the City Engineer), within the total square footage of excess parking proposed, as approved by the City Engineer.

(F) *Drainage.* Driveways shall not exceed a grade of four percent and all parking lots except those for less than four vehicles shall include a minimum of a one percent grade. Catch basins, sumps, and underground storm sewers must be installed if required by the City Engineer.

(G) *Traffic regulatory signs.* Stop signs are required at all driveway exits to city streets. Other signs may be required as part of the Site Plan Review process.

(H) *Stacking.* All drive-through service windows must contain room for a minimum stacking of six cars from the serving window and stacking must not extend into drive aisles.

(I) *Demonstrated parking.* The City Council may approve a "proof-of-parking" plan which allows for a portion of the required parking, but demonstrates that the minimum number of required parking spaces can be accommodated on the property and meet setback requirements. The plan must demonstrate that all other applicable ordinances can be met if the full amount of required parking were to be constructed. The area for future parking must be maintained as green space (sodded with grass or natural plant materials). Any changes to use and/or building size could invalidate the approval for "Demonstrated Parking". Demonstrated parking may reserve the right to require installation of the additional parking spaces.

(J) *Shared parking.* Parking areas may be shared by uses on separate lots within 500 feet of the entrance to the use it will serve provided that the following are met:

(1) Certain uses that have their highest peak demand for parking at substantially different times of the day or week can consider a plan to provide required parking by sharing parking with adjacent uses based on the following criteria:

(a) Up to 50% of the off-street parking stalls required for a theatre, bowling alley, dance hall, bar, or restaurant may be supplied by the off-street parking facilities provided by types of uses specified as a primarily daytime use in subparagraph (d) below.

(b) Up to 50% of the off-street parking stalls required for any use specified under subparagraph (d) below as primary daytime uses may be supplied by the parking facilities provided by the following nighttime or Sunday uses: auditoriums incidental to a public or parochial school, churches, bowling alleys, dance halls, theatres, bars, or restaurants.

(c) Up to 50% of the off-street parking stalls required by § 152.142 for a church or for an auditorium incidental to a public or parochial school may be supplied by off-street parking facilities provided by uses specified under subparagraph (d) below as primarily daytime uses.

(d) For the purpose of this section, the following uses are considered as primarily daytime uses: banks, business offices, retail stores/shopping centers, personal service shops, household equipment or furniture shops, clothing or shoe repair or service shops, manufacturing, wholesale, and similar uses.

(2) The parking area must have a pedestrian connection, which includes a trail or walkway, paved with a continuous impervious surface that connects to all users of the shared parking.

(3) The parking plan for the area must demonstrate that all other applicable ordinances can be met.

(4) Any adjacent properties with approved shared parking agreements must have vehicle access between them.

(5) The agreement between all affected property owners may be approved as to content by the City Attorney and may define responsibilities for maintenance. Where shared use of parking exists within the same site or across sites, a properly drawn legal instrument, drafted and executed by the parties concerned, must be filed as a deed restriction on both properties with the records for

both properties in the Registrar of Titles' or Recorder's Office of Hennepin County with proof thereof presented to the city. The intent in either case is that the agreement will be in the public record in perpetuity, and not altered unless approved by the city.

(6) *Revocation.* Failure to comply with the shared parking provisions of this section constitutes a violation of this Code. A shared parking agreement may be revoked by the parties to the agreement only if off-street parking is provided as otherwise set forth in § 152.142 of this Code, or if an alternative shared parking plan is approved by the city.

(K) Parking areas for interim or temporary uses in the R-1 Urban Reserve District are exempt from provisions in § 152.145(C)(4), (D), (E) and (L) only when approved through the interim use permit process as described in §§ 152.193 through 152.196.

(L) *Landscaping and screening.*

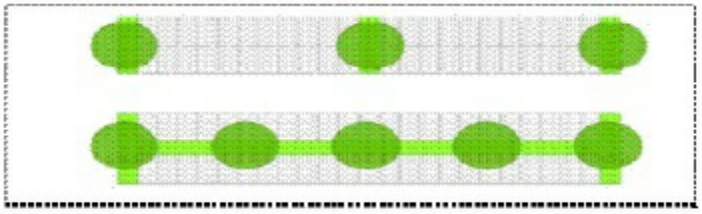
(1) All landscaped areas, including parking area islands must be equipped with an underground, automatic irrigation system. The irrigation system must include a flow meter, moisture sensing devices and must be calibrated to meet all applicable City Codes.

(2) *Interior parking lot area.* Ten percent of the impervious, interior parking area must be landscape islands, rain gardens or other green space. The 10% is included as part of the total open space requirement.

(3) *Parking area design.* To break up large impervious areas and provide greater shading and reduction of heat island effect all parking lots of at least 25 parking stalls or more, in any Business, Industrial, Mixed Use, Multiple Family Residential Districts and non-residential uses in these district shall be designed with landscaped parking lot islands distributed throughout the entire parking area. To ensure adequate distribution of landscaped islands within parking lots no more than the maximum number of stalls as displayed in the table below may be installed without abutting some type of landscaped islands. Landscaped islands may be designed at the ends of stalls, in a continuous row between bays as shown in the diagram below, or in other patterns, provided that an island is abutting parking stalls based on the table below. Islands designed at the end of rows shall have a minimum size of 180 square feet. Continuous parking lot islands shall be at least nine feet in width.

Islands can be designed at the end of rows or in a continuous row to meet the maximum number of stalls between island requirements

Landscape Island Requirements	
Use Type	***Maximum Number of Stalls Between Island***
Residential - multiple family uses	12 stalls
Commercial, mixed use, civic and institutional uses	22 stalls
Industrial and business park uses	22 stalls
Open storage warehouse and like uses	50 stalls



Type and quantity of landscaping required in islands and within the parking area shall comply with landscaping standards in § 152.374. Each landscape island must be planted with a minimum of one deciduous large or two medium trees, two shrubs and pervious ground cover as required in § 152.374. Rain gardens shall be finished with hardy native plant species that will survive and remain aesthetically pleasing in wet and dry conditions. The trees and shrubs in the landscape islands and rain gardens shall count toward the overall required landscaping in § 152.374.

(4) Parking areas greater than 50,000 square feet shall be divided both visually and functionally into smaller parking courts.

(5) *Screening*. Screening must be required for any off street parking or loading area and may be any combination of landscaping, decorative fencing, and berms, approved through the Site Plan Review process or as required elsewhere in this chapter, unless further restricted by the following:

(a) *Residential.* All parking and loading areas over four spaces must be screened from adjacent residential zoning districts. Screening must be a minimum of six feet in height when installed as measured from the parking area surface to the satisfaction of the City Manager. Fences alone shall not meet this requirement.

(b) *Street rights-of-way*. All parking areas containing more than four stalls and all loading areas must be screened from adjacent public rights-of-way. Screening must be a minimum of three feet in height as measured from the top of the adjacent parking area surface.

(6) *Perimeter parking area landscaping standards.* Where a parking area serving a use abuts a street right-of-way, vacant land, or any other development (except another parking use area), perimeter landscaping strips shall be provided and maintained between the vehicle use areas and the abutting right-of-way or property line in accordance with the following standards:

(a) *Location*.

1. Perimeter landscaping strips shall be located on the same land where the parking use area is located.

2. Perimeter landscaping strips may not be placed within future street rights-of-way as identified on the city's transportation plans.

(b) *Minimum width*. When the parking use area is located within 50 feet of a street right-of-way, the perimeter landscaping shall be located within a planting strip at least six feet wide. In all other instances, the strip shall be the minimum width necessary to assure required landscaping is not damaged by vehicle or other on-site activity. In no instance shall the strip be less than three feet wide.

(c) *Landscaping*. Each perimeter landscaping strip shall include landscaping screening of three feet in height as measured from the top of the adjacent parking area surface or screening that is 80% opaque where a parking lot abuts a residential zoning district.

(M) Parking of motorized vehicles outside of driveway locations is only allowed on areas paved with a continuous impervious surface, or approved pervious surface, or on legal non-conforming parking areas.

(N) *Pedestrian circulation*. All parking lots in Business, Commercial, Mixed Use, Industrial, Multiple-Family and non-residential uses in residential zoning districts shall be subject to the following standards to provide a safe pedestrian environment:

(1) Parking areas shall include a direct and continuous pedestrian network within and adjacent to parking lots to connect building entrances, parking spaces, public sidewalks, transit stops, and other pedestrian destinations.

(2) At least one pedestrian route shall be provided between the main building entrance and the public sidewalk that is uninterrupted by surface parking and driveways.

(3) In larger parking lots or where parking lots serve more than one building or destination, designated pedestrian pathways for safe travel through the parking lot shall be provided.

(4) All pedestrian routes within a parking lot shall include a clear division from vehicular areas, with a change in grade, soft landscaping, or a change in surface materials.

(5) Where pedestrian routes cross street access driveways and other major drive aisles, crossings shall be clearly marked and sight distance for both pedestrian and vehicles shall be unobstructed.

(O) *Credit for on-street parking.* This subsection is intended to reduce the amount of unnecessary parking spaces and to encourage pedestrian activity as an alternative means of transportation. Credit for on street parking shall be allowed only within mixed use developments and districts. Some or all of the off street parking spaces as required in § 152.142 of this chapter may be met by the provision of on street spaces. Such credit shall require site plan review approval. Requests for on street parking shall meet the following requirements:

(1) All on street parking facilities shall be designed in conformance with the standards established by the city;

(2) Prior to approving any requests for on street parking, the development review team shall determine that the proposed on street parking will not materially adversely impact traffic movements and related public street functions; and

(3) Credit for on street parking shall be limited to the number of spaces provided along the street frontage adjacent to the use.

(P) *Parking area stormwater management design requirements.* Each development and redevelopment within and Business, Industrial, Mixed Use or Residential District that requires a parking lot under the code, shall incorporate a minimum of two of the follow stormwater management techniques:

(1) Rainwater and snowmelt shall be managed to encourage infiltration, evapotranspiration, and water re-uses to achieve water quality and quantity measures as required by the Watershed District in which the site is located. Design practices for managing stormwater may include, but are not limited to, the following practices:

(2) Permeable paving for parking spaces, drive aisles, overflow parking, snow storage areas, and other hard surfaces in the parking lot.

(3) Planting of trees, shrubs, and other absorbent landscaping throughout the parking lot to provide shade and places for water uptake.

(4) Creation of bio-retention areas, such as swales, vegetated islands, and overflow ponds.

(5) Inclusion catch basin restrictors and oil/grit separators as appropriate.

(6) Creation of opportunities to harvest rainwater from rooftops and other hard surfaces for landscape irrigation.

(7) Where installed, bio-retention areas shall be appropriately designed and located to filter, store, and/or convey the expected stormwater flows from surrounding paved areas.

(8) The appropriate watershed district shall have final review and permitting authority for all surface water management measures proposed.

(Q) *Cart storage.* Any retail commercial uses using carts shall provide ample space for the storage of customer service carts within off-street parking areas (unless all carts are stored and returned at the building entry). The need and specific amount of required cart storage space shall be determined as part of site plan review. When required, cart storage areas shall not occupy required off-street parking space, shall be clearly delineated, and include facilities for cart confinement.

(Ord. 2000-936; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2004-1012, passed 5-3-04; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2006-1059, passed 6-5-06; Am. Ord. 2010-1113, passed 4-5-10; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.146 TRANSPORTATION DEMAND MANAGEMENT.

Because the purposes and intent of this section includes the lessening of congestion on the streets and roads, as well as generally protecting the public health, safety and welfare, specific standards and regulations are outlined which are intended to reduce traffic congestion and environmental pollution associated with vehicular transportation. The standards and regulations established are intended to be components of an overall transportation demand management plan. These standards apply to all new construction Business, Industrial, non-residential uses in any Residential District, Mixed Use development in any Overlay or PUD Zone Districts.

(A) *Bicycle parking requirements.* Encouraging the use of bicycles is an important non- motorized transportation alternative and a component of a transportation demand management program.

(1) *Required bicycle parking spaces.* The minimum number of bicycle parking spaces provided for any use shall be 5% of the vehicular parking spaces required for such use.

(2) *Design standards for bicycle parking spaces.* Bicycle parking spaces shall be:

(a) Located on the same lot as the principal use;

(b) Located to prevent damage to bicycles by cars;

(c) In a convenient, highly visible, active, well lighted area;

(d) Located so as not to interfere with pedestrian movements;

(e) As near the principal entrance of the building as practical;

(f) Located to provide safe access from the spaces to the right-of-way or bicycle lane;

(g) Consistent with the surroundings in color and design and incorporated, whenever possible, into buildings or street furniture design;

(h) Designed to avoid damage to the bicycles;

(i) Anchored to resist rust or corrosion, or removal by vandalism.

(B) *Car pool parking incentives.* The following regulations are intended to encourage the use of car pooling to increase vehicle occupancy and reduce traffic volumes and congestion:

(1) *Applicability.* The regulations of this subsection shall apply to all nonresidential buildings or uses constructed after adoption of this title, that employ 100 or more people.

(2) *Reserved parking spaces.* Uses that encourage a car pool program among employers are allowed to designate required parking as reserved car pool parking. No more than 10% of the total number of employee parking spaces for vehicles participating in a car pool program can be designated. Car pool parking spaces shall be located to provide superior convenience.

(3) *Submission of car pool parking plan.* Each use meeting the objectives of this subsection shall submit a plan of the employee parking spaces reserved for car pooling to the development review team for review and approval. The plan shall:

(a) Specify the total number of employee parking spaces provided;

(b) Indicate the number and location of parking spaces reserved for car pooling; and

(c) Include a copy of the car pool program which identifies the individuals participating in the car pool program.

(4) *Delineation of car pool parking spaces.* Car pool parking spaces shall be marked by sign or marking on the pavement to identify that the use of the spaces is reserved for the car pool program.

(C) *Transit service.* Parking may be reduced by 10% for any parcel located within one-quarter mile of a transit stop. This 10% shall be shown on the site as proof of parking in the event transit services are altered and additional parking is required. To qualify, the transit stop must be served by regular transit service on all days of the week and adequate pedestrian access must be available between the transit stop and parcel. Regular transit service shall operate at least twice hourly between 7:30 a.m. and 6:30 p.m. on weekdays and once hourly after 6:30 p.m. Regular transit service shall operate on Saturdays, Sundays, and holidays.

(D) *Motorcycle/scooter parking.* Two motorcycle/scooter parking spaces may be provided in lieu of one required automobile parking space. The maximum automobile parking space reduction under this provision shall be calculated at a 1:30 ratio (For every 30 required automobile parking spaces, one automobile space may be waived). Parking areas under 30 spaces may reduce the parking requirement by a maximum of one automobile parking space. Motorcycle parking must be properly labeled with signs and surfaced with concrete. The minimum stall size for one motorcycle shall be four-foot in width by seven foot in depth.

(E) *Compact parking stalls.* Parking areas including 30 spaces or more may include 35% compact parking stalls which must be labeled as such on the parking plan and located in areas of anticipated infrequent use. Compact parking stall sizes are stated in Figure 152.145.05.

(F) *Planned unit development (PUD).* Off-street parking requirements may be reduced through the planned development process when an applicant demonstrates the need for a lesser number of off-street parking spaces. The city may require a parking and transportation study conducted in accordance with accepted methodology approved by the city, prepared by an independent traffic engineering professional under the supervision of the city and paid for by the applicant.

(G) Industrial businesses in the General Industrial (I) zoning district may, after five years of operation at their current location, reduce the existing parking space width to 8.5 feet for workforce management.

(Ord. 2006-1059, passed 6-5-06; Am. Ord. 2010-1120, passed 11-22-10; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.147 OFF-STREET LOADING DOCKS AND STAGING AREAS.

All business and industrial uses must have an area designated for loading, unloading, or staging of delivery vehicles in compliance with the following.

(A) *Loading docks.* Loading docks must be provided in the Business Park and Industrial Districts, at a minimum, in compliance with the following:

Figure 152.146.09 Required Loading Docks	
Building Size (in square feet)	Required Loading Docks
< or = to 10,000	1
>10,000 and < or = to 20,000	2
>20,000 and < or = to 50,000	3
>50,000	4

(B) *Location.* All staging areas and loading docks must be off-street and must be located on the same lot as the building or use to be served. A loading dock or staging area must not be located between the principal building and a public right-of-way or residential property. All loading docks and staging areas visible from public rights-of-way or residential areas must be screened in compliance with §§ 152.370 through 152.378.

(C) *Access.* All loading docks and staging areas must be located with the appropriate means of vehicular access to a street or public alley in a manner which will least interfere with traffic.

(D) *Additional standards for loading docks:*

(1) Outdoor storage of goods and materials is prohibited in loading dock area.

(2) May not be included as part of the space requirements necessary to meet the off-street parking area.

(E) *Additional standards for staging areas:*

(1) Temporary parking of commercial vehicles is allowed for 96 hours or less.

(2) Any commercial vehicles in the staging area must be related and necessary to the principal permitted use of the property.

(3) Outdoor storage of goods or materials is prohibited in the staging area.

(4) Temporary parking spaces cannot be blocking drive aisles or public right-of-way, and must be properly marked and surfaced for orderly site design.

(5) Must be maintained, organized and free of trash or debris.

(6) Must be in a city-approved designated area of the property.

(7) May not be included as a part of the space requirements necessary to meet the off-street parking area.

(Ord. 2000-936; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2006-1059, passed 6-5-06)

ADDITIONAL PARKING STANDARDS

§ 152.148 ADDITIONAL PARKING STANDARDS FOR COMMERCIAL AND INDUSTRIAL USES.

For all commercial and industrial uses, outdoor parking of vehicles registered over 12,000 pounds must be in a designated city-

approved staging area in compliance with §§ 152.140 through 152.46.

(Ord. 2005-1032, passed 2-7-05)

ENCLOSURES

§ 152.150 TRASH AND WASTE ENCLOSURES.

All uses except single-family dwellings, two-family dwellings and townhouses must store their trash in compliance with one of the following two options:

(A) *Indoors*. Within a designated area of the interior of the building in conformance with the following:

(1) The adopted Fire and Building Codes.

(2) The area must be readily accessible by collection vehicles.

(3) The area must be readily accessible to the users by use of a pedestrian access, such as an easily operable door. The door must remain closed, except when servicing.

(4) The interior walls and floor of the area must be finished with smooth, non-absorbent material sealed or finished to withstand frequent cleaning.

(5) All waste storage areas must be kept clean and sanitary, and maintained in good condition.

(B) *Outdoors*. Outdoors within a four-sided accessory structure designed and sized for this purpose.

(1) *Requirements*. The enclosure must be in conformance with the following:

(a) The adopted Fire and Building Codes.

(b) For non-residential zoning districts the structure must be located to the rear of the principal building, may not be located within five feet of any interior lot line, must have the same setback as the principal building from any public right-of-way, and must be readily accessible by collection vehicles.

(2) *Design standards*. All waste enclosures must meet the following design standards:

(a) *Design*. Walls must be constructed of architectural masonry or similar materials. Enclosures must have an opaque gate made of metal or decorative wood. Design and materials of the trash enclosure must conform to the architecture of the buildings in the development and be compatible with the finish of the principal building. Additional landscape screening may be required for any enclosure requiring design review.

(b) *Pedestrian access*. Trash enclosures may have a pedestrian entrance when shared by multiple units. No more than two openings may be present per enclosure and the openings may not be placed in the same wall section. The opening may be no less than 32 inches and no more than 36 inches. For nonresidential properties, a gate is required for the opening. Where a gate is required or provided for the opening, it must be an opaque metal or decorative wood gate, meeting the design standards of this chapter.

(c) *Minimum size*. Trash enclosures must have minimum inside dimensions, excluding pedestrian access areas, of 8 feet by 12 feet, and must be sized to accommodate all waste, recycling, and trash storage. Walls and gates must be of a height to fully screen the view of the bins and storage. A maximum 6-inch space may exist at the bottom of the gate to the ground surface. A maximum of two openings on not more than two sides area allowed for drainage. Each opening may not exceed 8 inches by 16 inches per wall section.

(d) *Location*.

1. Trash enclosures must meet all setback requirements.

2. Trash enclosure doors must not restrict driveways, extend into adjacent parking spaces, or obstruct fire hydrants or building exits.

3. Trash enclosures must be located so they are accessible to collection vehicles.

4. Trash enclosures must remain at least five feet from any combustible construction or building openings.

(3) *Construction and maintenance standards*.

(a) All waste enclosure structures, including gates, must be designed to be durable and sound, and be maintained in good condition. All gates and doors must be kept closed, except during servicing.

(b) The enclosure area must be set on a concrete pad at ground level, with a minimum slope to prevent accumulation of water from cleaning and rain runoff.

(C) *Trash compactors*. Trash compactors that are open to or loaded outside must be located in a waste enclosure meeting the requirements of this chapter. Self-contained trash compactors that are completely enclosed and loaded only from the interior of a building must be located in a waste enclosure or meet the following criteria:

(1) *Design*. Design and materials of the trash enclosure must conform to the architecture of the buildings in the development and be compatible with the finish of the principal building, such as matching paint.

(2) *Screening*. Landscape screening or other screening may be required to eliminate or minimize the view from adjacent properties.

(3) *Nuisances*. Appropriate measures must be taken to prevent or eliminate nuisances from noise, trash, or other nuisances created by the location or use of the trash compactor.

(4) *Alternatives*. The City Manager's designee may consider alternatives to standard trash enclosures. Such alternatives shall be evaluated with respect to the following seven criteria:

(a) The proposal provides adequate capacity for the use.

(b) The proposal blends with the architecture of the site.

(c) The proposal provides convenient access for residents and businesses located within the development.

(d) The proposal meets code requirements for all setback requirements including, but not limited to, the front and street side yards and corner cut-offs.

(e) The proposal is accessible to trash collection vehicles.

(f) The proposal does not generate the potential for undesirable odors, noise, flies or nuisances.

(g) The proposal represents an improvement upon code requirements and more adequately meets the needs of the occupants.

(5) *Requests for consideration of alternatives*.

(a) Requests for consideration of alternatives must be submitted to the City Manager's designee with the following items: a written letter explaining the request, the reason for it, an explanation of how it meets the above seven criteria, a site plan, and a detail of the proposed alternative including specifications, colors and materials, and measures that will be taken to correct any problems associated with the proposed use if approved.

(b) After consideration, the City Manager's designee may, upon written findings reflecting compliance with the above seven criteria, allow installation of the requested alternative.

(c) Alternatively, the City Manager's designee may deny the request.

(d) Such denial shall set forth which criteria are not met.

(Ord. 2003-997, passed 5-12-03)

REQUIREMENTS FOR LICENSED DAYCARE FACILITIES

§ 152.160 PURPOSE.

This subchapter is established to comply with state statutes and provide safe and comfortable settings for licensed daycare facilities.

(Ord. 2000-936)

§ 152.161 LICENSE REQUIRED.

All daycare facilities must be licensed with the county before operations begin.

(Ord. 2000-936)

§ 152.162 COMPLIANCE.

The structure in which a facility is located must be in continual compliance with all building, fire, zoning, and health codes of the city and state.

(Ord. 2000-936)

§ 152.163 REGULATIONS FOR RESIDENTIAL DAYCARES.

Daycares are limited to the following in residential districts and residential portions of PCDD and PUD or the Conservancy District.

(A) Single-family structures - 14 or fewer children.

(B) Non single-family structures (except religious institutions or public or private schools) - 16 or fewer children.

(C) The size of the licensed daycare facility in a religious institution or public or private school is based on the size and capacity of the structure and the availability of parking.

(Ord. 2000-936)

§ 152.164 REGULATIONS FOR NON-RESIDENTIAL DAYCARES.

All day cares in business districts, in areas guided for business in the PCDD and PUD, and as an accessory use within multi-purpose buildings (i.e. religious institutions, schools, private businesses for employees' children, etc.) must be in compliance with the following:

(A) *Size*. Dependent on the size and capacity of the structure and the availability of parking.

(B) *Pick-up/drop-off areas*. The pick-up/drop-off area(s) must be located in close proximity to the front of the building and adjacent to a pedestrian area.

(Ord. 2000-936)

PERFORMANCE STANDARDS FOR RELIGIOUS INSTITUTIONS AND PUBLIC AND PRIVATE SCHOOLS

§ 152.180 PURPOSE.

These additional regulations are applied to religious institutions and schools due to their substantial and long-term impact on the city and the surrounding neighborhoods.

(Ord. 2000-936)

§ 152.181 RELIGIOUS INSTITUTIONS.

Religious institutions are permitted in various districts as outlined in §§ 152.242 and 152.342, but the restrictions on it may differ based on the district in which the religious institution is proposed. Architectural materials allowed for religious institutions shall follow the regulations for Business Districts (see § 152.392).

(A) *Green space/landscaped area in residential districts*. No more than 60% of the site may be covered by impervious surface. The remaining 40% must be landscaped or sodded. Tree and shrub quantities shall be calculated using the B1 requirements of § 152.374(A)(2) for all religious institutions located within a residential zoning district.

(B) *Residential districts.* Religious institutions may only be located on sites located directly at the intersections of two collector streets or along an arterial street as designated in the Comprehensive Plan.

(C) *Business districts.* In the B-3 Zoning District, religious institutions are only allowed as one tenant in a multi-tenant building, up to 49% of the building, located on a single tax parcel. All tenants must have separate, independent accesses through a public corridor or directly from outside. All building code requirements must be met.

(D) An office for a religious institution is considered an office use provided no worship services, events, or the like are conducted on site.

(E) Religious institutions with additional uses operating concurrently with a worship service must be figured into parking requirements.

(F) Parking shall meet the requirements of § 152.142.

(G) All religious institutions are subject to Site Plan Review requirements of § 152.033.

(H) Religious institutions may conduct worship and educational programs as permitted accessory uses in public schools in all zoning districts outside of normal school instructional hours. Formal Site Plan Review as described in § 152.033(D)(1) is not required.

(I) Religious institutions in residential zones are allowed to operate a farmer's market as described in § 152.362(G) by obtaining a conditional use permit.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2007-1070, passed 3-26-07; Am. Ord. 2012-1150, passed 10-15-12; Am. Ord. 2013-1155, passed 3-25-13)

§ 152.182 PUBLIC AND PRIVATE SCHOOLS.

(A) All public and private schools, including charter schools and Alternative Learning Centers established by a school district pursuant to M.S. § 123A.05 to 123A.09, must receive a Conditional Use Permit when not located within the Public Institution (PI) Zoning District.

(B) All public and private schools must conform to the minimum guidelines for open space and recreational space of the State of Minnesota.

(C) Public and private schools must conform to the landscaping requirements for business zoning districts (see §§ 152.370 through 152.378). For sites zoned PI, the B3 landscaping requirements must be used.

(D) Public and private schools located in business zoning districts must conform to the following performance standards:

(1) The city must find that the school use would be compatible with existing or planned adjacent uses;

(2) Schools which include grades kindergarten through eight must be adjacent to another public elementary school. Schools which include only grades nine and higher must be within 1,000 feet to public parks;

(3) The site must conform to all parking requirements of §§ 152.140 through 152.146;

(4) The city must find that traffic speeds and volumes on adjacent streets do not pose a safety hazard;

(5) The city must find that the site has adequate space for school bus loading and movement, including turnarounds.

(6) The site must include sidewalks and/or other pedestrian facilities appropriate to the site for student safety.

(E) Non-affiliated public and private schools are allowed by conditional use permit when located within a building primarily used for a religious institution.

(F) Job training programs, including those training programs for people with a physical, mental, or developmental disability, are not considered schools for zoning purposes, but shall be classified by the skill or job being taught.

(G) Public and private schools in all zoning districts may permit use of their facilities to community, civic, charitable, or religious organizations outside of normal school instructional hours.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2002-978, passed 8-12-02; Am. Ord. 2007-1070, passed 3-26-07; Am.

Ord. 2012-1138, passed 4-16-12; Am. Ord. 2012-1150, passed 10-15-12)

SUSTAINABILITY PROVISIONS

§ 152.184 COMMUNITY GARDEN STANDARDS.

(A) Community garden areas may be divided into separate garden plots for cultivation by one or more individuals or may be farmed collectively by members of the group. A community garden may include common areas (e.g. storage sheds) maintained and used by the groups. The community garden must comply with the lot and building standards for its zoning district.

(B) Community garden or private garden may serve as a permitted accessory use in any residential, business, public institution district or city owned park or open space. A community garden may be permitted as an interim use on a vacant lot in any residential district. A community garden area may count towards required open space in any zoning district. The following conditions shall be met for all community gardens:

(1) The garden area shall be limited to growth of food crops and/or non-food ornamental crops such as flowers. Maintaining beehives, livestock and poultry shall be prohibited.

(2) *Location*. Community gardens may not be located within any easement without the property owner obtaining written permission from the easement holder.

(3) *Setbacks*. The garden shall be set back a minimum of 20 feet from all property lines in order to provide a vegetated buffer of grass or other plants to minimize the transfer of sediment and to delineate the edges of the garden.

(4) *Access*. Paths may be installed to access the garden and individual garden plots provided the paths are constructed using natural landscape materials including wood chips, mulch, landscape rock or pea gravel.

(5) *Fences*. Fences are allowed as permitted by this chapter and provided they are made of sturdy, rust resistant woven wire and/or rot resistant wood, are well maintained and neat in appearance.

(6) The garden area shall be properly maintained throughout the year by:

(a) Weekly mowing the grassy areas.

(b) Weekly removing the weeds and grasses from the actual garden.

(c) Weekly collecting rotting vegetables/fruits from garden areas and providing off-site disposal of this waste.

(d) Weekly collecting and removing all trash and debris that is deposited on the site.

(e) Providing for season end removal of all dead plant growth/waste no later than October 31.

(7) *Trash containers*. Trash containers may be provided on site provided they have a cover and meet accessory structure setbacks for the underlying zoning district. All trash shall be removed from the site at least once per week.

(8) Compost bins are permitted provided they meet the accessory structure standards of the district in which it is located.

(9) No overhead lighting shall be permitted on the site.

(10) One non-illuminated sign not exceeding four square feet in area and six feet in height shall be permitted. The sigh face shall be located parallel to the front property line and shall not be located in the front yard area. The content of the sign shall be limited to identification of the site as a community garden, sponsorship contact information and rules/guidelines for the community garden.

(11) *Parking*. Parking for the garden shall be provided on streets where parking is permitted or on an existing parking surface with the written permission of the owner of the parking surface.

(12) *Seasonal sales stands*. Seasonal sales stands shall be permitted but must be removed from the premises or stored inside a building on the premises during that time of the year when the garden is not open for public use. All products sold must be grown within the community garden.

(13) One portable restrooms shall be permitted on the site.

(14) One utility shed shall be allowed on the site under the following conditions:

(a) Maximum area of 150 square feet.

(b) Must be located within the rear yard setback and at least five feet off the side and rear property lines.

(c) Maximum height of ten feet.

(15) Any power equipment and attachments, hand tools, fertilizer, chemicals and other equipment and materials that is kept on the site shall be stored within a utility shed.

(16) The following miscellaneous improvements shall be permitted on the site:

(a) Trellises.

(b) Raised planting beds.

(c) Benches.

(d) Covered trash receptacles.

(17) *Negative impacts.* The site shall be designed and maintained to prevent negative impacts to adjacent properties from individual gardeners and gardening activities including, but not limited to, irrigation, fertilizer, soils, stormwater, cultivated areas, trespassing and garden debris.

(18) *Site restoration.* Upon cessation of the community garden, the site shall be fully restored to the pregarden status. All aboveground remains of the garden shall be promptly removed and the ground leveled and restored so it can be utilized for uses permitted in the zoning district.

(Ord. 2012-1133, passed 3-5-12)

§ 152.185 ALTERNATIVE ENERGY SYSTEMS.

(A) *Scope.* Sections 152.185 through 152.188 apply to alternative energy systems in all zoning districts.

(B) *Purpose and intent.* The purpose and intent of this section is to establish standards and procedures by which the installation and operation of wind and solar energy system shall be governed within the city. The city finds that it is in the public interest to encourage alternative energy systems that have a positive impact on energy production and conservation while not having an adverse impact on the community.

(C) *Definitions.* For the purpose of §§ 152.185 through 152.188 the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY. A system designed as a secondary use to existing buildings or facilities, wherein the power generated is used primarily for on-site consumption.

ALTERNATIVE ENERGY SYSTEM. A wind energy conversion system or a solar energy system.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM. A 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 including, but not limited to, photovoltaic or hot water solar systems contained within roofing materials, windows, skylights and awnings.

CLOSED LOOP GROUND SOURCE HEAT PUMP SYSTEM. A system that circulated a heat transfer fluid, typically food-grade antifreeze, through pipes or coils buried beneath the land surface or anchored to the bottom of a body of water.

FLUSH-MOUNTED SOLAR ENERGY SYSTEM. A roof-mounted system mounted directly abutting the roof. The pitch of the solar collector may exceed the pitch of the roof up to 5% but shall not be higher than ten inches above the roof.

GROUND SOURCE HEAT PUMP SYSTEM. A system that uses the relatively constant temperature of the earth or a body of water to provide heating in the winter and cooling in the summer. System components include open or closed loops of pipe, coils or plates; fluid that absorbs and transfers heat; and a heat pump unit the processes heat for use or disperses heat for cooling; and an air distribution system.

HORIZONTAL AXIS WIND TURBINE. A wind turbine design in which the rotor shaft is parallel to the ground and the blades

are perpendicular to the ground.

HUB. The center of a wind generator rotor, which holds the blades in place and attaches to the shaft.

HUB HEIGHT. The distance measured from natural grade to the center of the turbine hub.

MONOPOLE TOWER. A tower constructed of tapered tubes that fit;together symmetrically and are stacked one section on top of another and bolted to a concrete foundation without support cables.

PASSIVE SOLAR ENERGY SYSTEM. A 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.

RESIDENTIAL WIND TURBINE. A wind turbine of ten kilowatt (kW) nameplate generating capacity or less.

SMALL WIND TURBINE. A wind turbine of 100 kW nameplate generating capacity or less.

SOLAR ENERGY SYSTEM. A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation or water heating.

TOTAL HEIGHT. The highest point above natural grade reached by a rotor tip or any other part of a wind turbine.

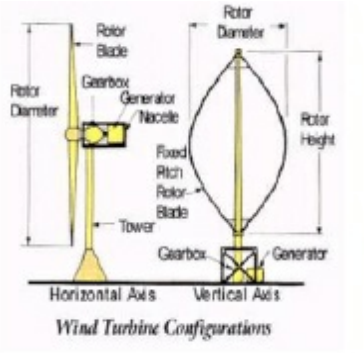
TOWER. A vertical structure that supports a wind turbine.

UTILITY WIND TURBINE. A wind turbine of more than 100 kW nameplate generating capacity.

VERTICAL AXIS WIND TURBINE. A type of wind turbine where the main rotor shaft runs vertically.

WIND ENERGY CONVERSION SYSTEM (WECS). An electrical generating facility that consists of a wind turbine, feeder line(s), associated controls and may include a tower.

WIND TURBINE. Any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.



Wind Turbine Configurations

§ 152.186 WIND ENERGY CONVERSION SYSTEMS (WECS) STANDARDS.

(A) *Zoning districts.*

(1) Utility wind turbines shall be allowed as an accessory use in the I and BP districts.

(2) Small wind turbines shall be allowed as an accessory use in all business districts, and non residential uses in commercial districts.

(3) Residential wind turbines (only vertical axis style permitted) shall be allowed as an accessory use in all residential districts.

(B) *Number.* No more than one WECS is allowed per parcel.

(C) *Design standards.*

(1) *Height.* The permitted maximum height of a WECS shall be determined on the type of system proposed.

(a) *Utility wind turbines.* The height of a freestanding WECS located in a BP or I district shall not exceed 100 feet.

(b) *Small wind turbines.* The height of a freestanding WECS located in a business district shall not exceed 75 feet.

(c) Residential wind turbines. Residential wind turbines can be either building mounted a maximum height of 15 feet above the roofline of the principal structure; or mounted on a tower a maximum height of 20 feet above the roof line of the principal structure. Poles must be connected to the principal structure and cannot be freestanding. All residential wind turbines shall be of the vertical axis style.

(d) The structure upon which the proposed WECS is to be mounted shall have the structural integrity to carry the weight and wind loads of the WECS and have minimal vibration impacts on the structure.

(e) Poles shall match the color of the principal structure.

(2) *Blade length.* A maximum blade length of 15 feet is permitted.

(3) *Setbacks for building mounted.* A building or roof mounted vertical axis style WECS shall be located only on the side or rear rooflines.

(4) *Easements.* Wind energy systems shall not encroach on public drainage, utility roadway or trail easements.

(5) *Rotor clearance.* Blade-arcs created by the WECS shall have a minimum of 30 feet of clearance over any structure or tree within a 300 foot radius.

(6) *Feeder lines.* The electrical collection system shall be placed underground within the interior of each parcel. The collection system may be placed overhead near substations or points of interconnection to the electric grid.

(7) *Aesthetics.* All portions of the wind energy system shall be a nonreflective, non-obtrusive color, subject to the approval of the City Planner. Only monopole towers are permitted. The appearance of the turbine, tower and any other related components shall be maintained throughout the life of the wind energy system pursuant to industry standards. Systems shall not be used for displaying any advertising, except for applicable warning and equipment information required by the manufacturer or by federal, state or local regulations. Systems shall not be illuminated.

(G) *Noise.* Wind energy systems shall comply with Minnesota Pollution Control Agency standards, as outlined in Minn. Rules Chapter 7030, at all property lines.

(H) *Screening.* Wind energy systems are exempt from the requirements of § 152.375.

(I) *Safety.*

(1) *Standards.* Wind energy systems shall meet minimum standards such as International Electrotechnical Commission (IEC) 61400-2 or the American Wind Energy Association's (AWEA) Small Wind Turbine Performance and Safety Standard or other standards as determined by the community development director.

(2) *Maintenance.* Wind energy systems shall be maintained under an agreement or contract by the manufacturer or other qualified entity.

(3) The WECS shall be equipped with both a manual and an automatic braking device capable of stopping the WECS operation in high winds.

(4) *Tower access.* To prevent unauthorized climbing, WECS towers must comply with one of the following provisions:

(a) Tower climbing apparatus shall not be located within 12 feet off the ground.

(b) A located anti-climb device shall be installed on the tower.

(c) Tower capable of being climbed shall be enclosed by a locked, protective fence at least eight feet high.

(J) *Utility connection.* All grid connected systems shall have an agreement with the local utility prior to the issuance of a building permit. A visible external disconnect must be provided if required by the utility.

(K) *Abandonment.* If the wind energy system remains nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned and shall constitute a public nuisance. The owner shall remove the abandoned system at their

expense after a demolition permit has been obtained. Removal includes the entire structure including foundations to below natural grade and transmission equipment.

(L) *Permits*. A building permit shall be obtained for any wind energy system prior to installation. All applications shall be accompanied by detailed plans and specifications including, but not limited to, the following information:

(1) Site Plan showing:

(a) Lot lines and dimensions.

(b) Location and height of all buildings, structures, above ground utilities and trees on the lot, including both existing and proposed structures and guy wires anchors.

(c) Locations and height of all adjacent buildings, structures, above ground utilities and trees located within 300 feet of the exterior boundary of the property in question.

(d) Existing and proposed setbacks of all structures located on the property in question.

(2) Scaled drawings and photographic perspectives accurately depicting the structure the proposed location of the WECS and its relationship to structures on adjacent lots.

(3) A written certification from a licensed structural engineer that the structure has the structural integrity to carry the weight and wind loads of the WECS and have minimal vibration impacts on the structure.

(4) An analysis from a licensed engineer showing how the WECS shall be designed, constructed and operated in compliance with all applicable federal, state and local laws, codes, standards and ordinances.

(5) A written certification from a licensed engineer confirming that the WECS is designed to not cause electrical, radio frequency, television and other communication signal interference.

(6) Roof mounted WECS shall include detailed plans illustrating roof construction, mounting techniques and wind load capacity.

(Ord. 2012-1133, passed 3-5-12)

§ 152.187 SOLAR ENERGY STANDARDS.

(A) *Solar energy collection equipment.*

(1) *Zoning districts*. Solar energy systems in accordance with the standards in this section are allowed as a permitted accessory use in all zoning districts.

(2) Exemption: Passive or building-integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.

(3) *Standards.*

(a) *Location*. In residential zoning districts, ground-mounted solar energy systems are limited to the rear yard. In non-residential zoning districts, ground- mounted solar energy systems may be permitted in the side yard meeting accessory structure requirements in § 152.360.

(b) *Height.* Roof-mounted solar energy systems shall comply with the maximum height requirements in the applicable zoning district. Ground mounted solar energy systems shall not exceed 15 feet in height.

(c) *Setbacks*. Ground-mounted solar energy systems shall comply with all accessory structure setbacks in the applicable zoning district. Roof-mounted systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.

(d) *Roof mounting*. Roof mounted solar collectors shall be flush mounted on pitched roofs unless the roof pitch is determined to be inadequate for optimum performance of the solar energy system in which case the pitch of the solar collector may exceed the pitch of the roof up to 5% but in no case shall be higher than ten inches above the roof. Solar collectors may be bracket-mounted on flat roofs.

(e) *Easements*. Solar energy systems shall not encroach on public drainage, utility roadway or trail easements.

(f) *Screening.* Solar energy systems shall be screened from view to the extent possible without impacting their function.

(g) *Maximum area.* In all residential districts, ground mounted solar energy systems shall be limited to a maximum area of 200 square feet.

(h) *Aesthetics.* All solar energy systems shall be designed to blend into the architecture of the building to the extent possible without negatively impacting the performance of the system and to minimize glare towards vehicular traffic and adjacent properties.

(i) *Feeder lines.* The electrical collection system shall be placed underground within the interior of each parcel. The collection system may be placed overhead near substations or points on interconnection to the electric grid.

(j) Structures shall not be located such that solar power access blocks a neighboring property.

(k) *Abandonment.* If a solar energy system remains nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned and shall constitute a public nuisance. The owner shall remove the abandoned system at their expense after a demolition permit has been obtained. Removal includes the entire structure including transmission equipment.

(l) *Permits.* A building permit shall be obtained for any solar energy system prior to installation.

(Ord. 2012-1133, passed 3-5-12)

§ 152.188 GROUND SOURCE HEAT PUMP SYSTEM STANDARDS.

(A) *Ground source heat pump systems.*

(1) *Zoning districts.* Ground source heat pump systems in accordance with the standards in this section are allowed as a permitted accessory use in all zoning districts.

(2) *System requirements:*

(a) Only closed loop ground source heat pump systems utilizing heat transfer fluids as defined in § 152.185 are permitted. Open loop ground source heat pump systems are not permitted.

(3) *Setbacks.*

(a) All components of ground source heat pump systems including pumps, borings and loops shall be set back at least five feet from interior side lot lines and at least ten feet from rear lot lines.

(b) Above-ground equipment associated with ground source heat pumps shall not be installed in the front yard of any lot or side yard of a corner lot adjacent to a public right-of-way and shall meet all required setbacks for the application district.

(4) *Easements.* Ground source heat pump systems shall not encroach on public drainage, utility roadway or trail easements.

(5) *Noise.* Ground source heat pump systems shall comply with Minnesota Pollution Control Agency standards at all property lines.

(6) *Screening.* Ground source heat pumps are considered mechanical equipment subject to the requirements of this chapter.

(7) *Abandonment.* If the ground source heat pump remains nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned and shall constitute a public nuisance. The owner shall remove the abandoned system at their expense after a demolition permit has been obtained in accordance with the following:

(a) The heat pump and any external mechanical equipment shall be removed.

(b) Pipes or coils below the land surface shall be filled with grout to displace the heat transfer fluid. The heat transfer fluid shall be captured and disposed of in accordance with applicable regulations. The top of the pipe, coil or boring shall be uncovered and grouted.

(8) *Permits.* A building permit shall be obtained for any ground source heat pump system prior to installation.

(Ord. 2012-1133, passed 3-5-12)

DRAINAGE AND PONDING

§ 152.190 PURPOSE.

The purpose of this subchapter is to prevent damage to surrounding properties from storm water run-off from vacant, developing and re-developing properties. For specific projects, storm water run-off may be under the jurisdiction of the applicable watershed management commission.

(Ord. 2000-936)

§ 152.191 DRAINAGE.

No land may be developed and no use will be permitted that results in water run-off causing flooding, erosion, or deposit of minerals on adjacent properties. Such runoff must be properly channeled into a storm drain, water course, ponding area, or other public facilities. Any change in grade affecting storm water run-off onto adjacent property(ies) must be as approved by the City Manager and/or the applicable watershed management commission.

(Ord. 2000-936)

§ 152.192 PONDS.

Storm water detention/retention ponds may be required on any property or properties that are five acres or more in size and are requirement to provide detention/retention ponding on site.

(Ord. 2000-936)

INTERIM USES

§ 152.193 PURPOSE.

The purpose of allowing interim uses is:

(A) To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.

(B) To allow a use that is presently judged acceptable by the City Council, but that with anticipated development or redevelopment, will not be acceptable in the future or will be replaced in the future by a permitted or conditional use allowed within the respective district.

(C) To allow a use which is reflective of anticipated long range change to an area and which is in compliance with the comprehensive plan provided that said use maintains harmony and compatibility with surrounding uses and is in keeping with the architectural character and design standards of existing uses and development.

(Ord. 2005-1049, passed 9-26-05)

§ 152.194 PROCEDURE.

Uses defined as interim uses shall obtain an interim use permit and shall be processed according to the standards and procedures for a conditional use permit as established in § 152.035.

(Ord. 2005-1049, passed 9-26-05)

§ 152.195 GENERAL REQUIREMENTS.

An interim use shall comply with the following:

(A) Meet the standards of a conditional use permit set forth in § 152.035.

(B) State that certain date or event that will terminate the use.

(C) Shall not impose additional unreasonable costs on the public.

(D) Interim uses are waived from compliance with the Highway Overlay District standards.

(E) All lots served by an individual/private sewer and water system must abandon the individual system and be connected to the public sanitary sewer and water when there is a change in the use of the property, or within one year of the date the public system becomes available to the lot, whichever occurs first.

(F) Meet any conditions that the City Council deems appropriate for permission of the use.

(G) Interim use permits shall be annually reviewed by the City Council.

(Ord. 2005-1049, passed 9-26-05)

§ 152.196 TERMINATION.

An interim use permit shall terminate on the happening of any of the following events, whichever occurs first:

(A) The date stated in the interim use permit.

(B) Upon violation of conditions under which the permit was issued.

(C) Upon change in the city's zoning regulations, which render the use nonconforming.

(D) The redevelopment of the use and property.

(Ord. 2005-1049, passed 9-26-05)

RESIDENTIAL PERFORMANCE STANDARDS

ESTABLISHMENT OF RESIDENTIAL DISTRICTS

§ 152.200 PURPOSE.

This subchapter of the chapter defines and establishes the residential zoning districts within the city. The residential districts as a whole are designed to balance housing type, choices, affordability, and style in an effort to promote neighborhood stability and livability. The following residential zoning classifications, except PCDD and PUD, are hereby established within the City of Brooklyn Park.

(Ord. 2000-936)

§ 152.201 "R-1" URBAN RESERVE DISTRICT.

(A) *Purpose*. The "R-1" Urban Reserve District is intended to provide the following:

(1) A district which allows for the orderly phasing and development of land until city services, including sanitary sewer, storm sewer, and water, are extended into the area in compliance with the Comprehensive Plan.

(2) A district for uses that typically require significant amounts of open land area such as athletic and cultural facilities, country clubs, government buildings, educational uses, and land reclamation.

(3) A district which allows for short-term agriculture uses and very low density residential uses and those accessory uses customarily incidental to them.

(B) *Application*. The district may be applied only to those areas guided as an urban reserve area in the Comprehensive Land Use Plan.

(Ord. 2000-936)

§ 152.202 "R-2" DETACHED SINGLE-FAMILY ESTATE DISTRICT.

(A) *Purpose*. The "R-2" Detached Single-Family Estate District is intended to provide a district which allows for large lot detached single-family dwellings and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for low density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.203 "R-2A" DETACHED SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-2A" Detached Single-Family Residential District is intended to provide a district which allows for detached single-family dwellings and for uses customarily incidental to them. The city will evaluate all subdivision applications in this zoning district and determine the adequacy of the proposed development considering all elements of the site plan. The elements that will be reviewed in detail include, but are not limited to, landscaping; screening and buffering from public rights-of-way and other uses; mailbox design; lighting design and spacing; the creation and proposed use of private open space and protection of natural environments; and trail corridors and connections.

(B) This district may be applied only to those areas guided for low density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.204 "R-2B" DETACHED SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-2B" Detached Single-Family Residential District is intended to provide a district which allows for detached single-family dwellings and for uses customarily incidental to them. The city will evaluate all subdivision applications in this zoning district and determine the adequacy of the proposed development considering all elements of the site plan. The elements that will be reviewed in detail include, but are not limited to, landscaping; screening and buffering from public rights-of-way and other uses; mailbox design; lighting design and spacing; the creation and proposed use of private open space and protection of natural environments; and trail corridors and connections to parks and open space areas.

(B) This district may be applied only to those areas guided for low density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.205 "R-3" DETACHED SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-3" Detached Single-Family Residential District is intended to provide a district which allows for detached single-family dwellings and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for low density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.206 "R-3A" DETACHED SINGLE-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-3A" Detached Single-Family Residential District is intended to provide a district which allows for detached single-family dwellings and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for low density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.207 "R-4" DETACHED SINGLE- AND ATTACHED TWO-FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-4" Detached Single- and Attached Two-Family Residential District is intended to provide a district which allows for detached single and attached two-family dwellings and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for low or medium density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.208 "R-4A" TOWNHOUSE DISTRICT.

(A) *Purpose*. The "R-4A" Townhouse District is intended to provide a district which allows for a variety of attached residential dwellings and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for low or medium density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.209 "R-5" MULTIPLE FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-5" Multiple Family Residential District is intended to provide a district which allows for two story multiple family structures and for uses customarily incidental to them.

(B) This district may be applied only to those areas guided for medium or high density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.210 "R-6" MULTIPLE FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-6" Multiple Family Residential District is intended to provide a district which allows for multiple family dwellings over two stories and for uses customarily incidental to them.

(B) This district may only be applied to those areas guided for high density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.211 "R-7" MULTIPLE FAMILY RESIDENTIAL DISTRICT.

(A) *Purpose*. The "R-7" Multiple Family Residential District is intended to provide a district which allows for multiple family dwellings and for uses customarily incidental to them.

(B) This district may only be applied to those areas guided for high density residential development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.212 "R-4B" DETACHED SINGLE FAMILY DISTRICT.

(A) Purpose. The "R-4B" District is to provide regulations for single family homes within association maintained communities.

(B) The District may only be applied to those areas designated for low or medium density residential development on the Comprehensive Land Use Map.

(Ord. 2004-1029, passed 12-13-04)

REQUIRED LOT AREA AND DIMENSIONAL REQUIREMENTS FOR RESIDENTIAL DISTRICTS

§ 152.220 PURPOSE.

The purpose of this section is to establish minimum area and dimensional requirements for residential properties to allow conformance with the residential densities and policies of the Comprehensive Plan, promote open space around structures, provide green area and space for enjoyment by residents, and protect public easements.

(Ord. 2000-936)

§ 152.221 STANDARDS.

The following standards are established for all lots in the residential zoning districts (R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-4A, R-5, R-6, and R-7) and lots in the residential portions of the PCDD and PUD. Lots in residential portions of the PCDD and PUD may be further governed as defined elsewhere in City Code.

(A) No required lot area, yard or open space allocated to a structure or lot in compliance with this chapter may be used to satisfy the minimum lot area, yard, or open space requirement for any other structure or lot, unless modified by this chapter.

(B) The maximum total building footprint, including principal and accessory buildings, may not exceed 25% of the lot area. The maximum amount of impervious surface in front yards, as measured from the public right-of-way to the front facade of the principal building, may not exceed 40%.

(C) Minimum lot area and width for each residential zone are defined in the following table:

Figure 152.221.01 Required Minimum Lot Width and Area ***in Residential Districts***

Zoning District	***Minimum lot area in square feet (unless otherwise specified)***	***Lot width in lineal feet measured at the front setback***
R-1	20 Acres	330 feet*
R-2	13,500	100*
R-2A	12,825	95*
R-2B	11,475	85*
R-3	10,800	80*
R-3A	9,750	75*
R-4 (lots for single-family dwellings)	8,500	70*
R-4 lots for two-family dwellings (for lots of record prior to 2/1/80		

and on which two-family dwellings were existing on the effective date of this chapter)	10,800	80
Each half of two-family dwelling to be subdivided (for lots of record prior to 2/1/80 and on which two-family dwellings were existing on the effective date of this chapter)	5,400	40
R-4 lots for two-family dwellings (for lots of record after 2/1/80 and on which two-family dwellings were not existing on the effective date of this chapter)	16,200	120
Each half of two-family dwelling to be subdivided (for lots of record after 2/1/80 and on which two-family dwellings were not existing on the effective date of this chapter)	8,100	60
R-4A for townhouse	8,700 with basements, 10,890 without basements (buildable land only, excludes wetlands, surface waters, flood plains)	NA
R-4B	5,000 square feet	45
R-5 for multiple family dwellings	22,000 or 3,400 square feet for each 1 bdrm unit, 4,500 square feet for each 2 bdrm unit, and 6,300 square feet for each three bdrm unit plus 500 square feet for each bdrm over 3; whichever is greater	120
R-6 for multiple family dwellings	160,000 or 2,400 square feet for each 1 bdrm. unit, 3,000 square feet for each 2 bdrm unit, and 3,500 square feet plus 500 square feet for each bdrm over 3; whichever is greater	400
R-7 for multiple family dwellings	5 acres or 3,400 square feet for each 1 bdrm unit, 4,500 square feet for each 2 bdrm unit, and 6,800 square feet for each three bdrm unit plus 500 square feet for each bdrm over 3; whichever	500

	is greater	
R-5, R-6, and R-7 for Care centers and convalescent homes	750 square feet of lot area for each person cared for (design capacity)	See District Requirement Above
*See § 152.275.04 for additional lot width requirements on corner lots		

(D) In order to promote individual ownership of two-family dwellings the minimum lot areas and lot widths contained in this section do not apply to lot splits along the common wall where an existing two-family dwelling is being converted into two separate, attached single-family dwellings.

(Ord. 2000-936; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2004-28, passed 12-13-04; Am. Ord. 2006-1055, passed 2-6-06)

§ 152.222 SETBACKS.

Principal buildings and accessory structures must comply with the following restrictions for setbacks in residential districts:

(A) *Exceptions*. The following features may extend three feet into the minimum setback:

(1) Chimneys, flues, belt courses, sills, pilasters, lintels.

(2) Ornamental features like cornices, eaves, bays, gutters and other similar projections.

(B) *Front setbacks* (measured in feet, from the property line):

Figure 152.222.02 Required Front Setbacks

	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R
Principal and "A" or "B" Minor Arterials	50	50	75	75	50	50	50	See Townhouse Setbacks	50	50	5
All other public streets	35	30	30 house, 40 for garages on lots with sidewalks	30 house, 40 for garages on lots with sidewalks	30	30 with sidewalks, 25 without sidwalks	30		50	50	5

(1) All residential units must be constructed at the required setback or no more than ten feet greater than the setback line as established in the respective zoning district. For in-fill development in residential neighborhoods that do not conform to these setbacks, the minimum setback line is the average depth of the adjacent properties' front yard.

(2) Once the front setback has been established and an address assigned, the building or setbacks must not be reversed.

(3) The following are considered a permitted encroachment into the front setback if they extend no more than a distance of six feet: balconies and porches, steps, stoops, and the like provided they do not have a floor higher than the entrance floor to the building and are not enclosed with windows, screens, or the like, although they may have a roof.

(4) Sidewalks, driveways, and parking areas are not considered encroachments when in compliance with §§ 152.130 through 152.132 and §§ 152.140 through 152.146.

(5) Handicap access ramps may encroach into the front setback in order to meet the running slopes required by the Minnesota Accessibility Code.

(6) On lots fronting sidewalks in the R2A and R2B Zoning Districts, garages must be setback 40 feet from the front property line, unless the sidewalk is greater than ten feet from the front property line, in which case, the front setback for garages may be reduced to 30 feet from the front property line.

(C) *Side setbacks* (measured in feet, from the property line):

Figure 152.222.03 Required Side Setbacks

	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R
Interior property line	10	10	7.5	7.5	10	10	10		15	15	5
Corner Lots - Principal, "A" or "B" Minor Arterials, or Class I Collector streets or any other public streets when the adjacent lot fronts the side street	Front setback of the adjacent property							See Townhouse Setbacks	25	25	5
Corner Lots - All other public streets when the adjacent lot does not front the side street	20	20	20	20	20	20	20				

(1) If an attached garage has a dwelling unit constructed above it, the setback must not be less than five feet on the garage side of the lot, except in the R-2A or R-2B Single-family Residential Districts which have a minimum 7.5-foot side setback for both garages and principal uses.

(2) The following may not be closer than five feet from interior lot lines and 20 feet from public rights-of-way unless further restricted elsewhere in this chapter:

(a) Carports, garages (attached or detached), vehicles, recreational equipment and recreational vehicles, driveways, and parking areas.

(b) Solar collectors, swimming pools and landscaping structures (excluding retaining walls).

(c) Balconies, breezeways, gazebos, decks, patios.

(d) Screened porches, and three season porches

(e) Private outdoor recreational equipment.

(D) *Rear setbacks* (measured in feet, from the property line):

Figure 152.222.04 Required Rear Setbacks											
	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R
Principal, "A" and "B" Minor Arterial and Class I Collectors	50	50	75	75	50	50	50	See Townhouse Setbacks	40	40	5
All Other Public Streets and Interior Property Lines	30	30	30	30	30	30	30		40	40	5
Double Frontage Lots	Same as the front setback of any adjacent residential zoned properties								50	50	5

(1) The following may not be closer than five feet from interior lot lines and 20 feet from public rights-of-way unless further restricted elsewhere in this chapter:

(a) Carports, garages (attached or detached), vehicles, recreational vehicles and equipment, driveways, and parking areas.

(b) Solar collectors, swimming pools and landscaping structures (excluding retaining walls).

(c) Balconies, breezeways, gazebos, decks, patios.

(d) Screened porches, and three season porches

(e) Private outdoor recreational equipment.

(2) Handicap access ramps may encroach into the rear setback in order to meet the running slopes required by the Minnesota Accessibility Code.

(E) *Setbacks for townhouses as measured in feet:*

Figure 152.222.05 Townhouse Setbacks		
	Principal and "A" or "B" Minor Arterials, Class I Collectors	Perimeter
Attached or detached townhouses	75'	30'

(F) Transmission line setback. All homes shall be setback a minimum distance equal to the tower height along power transmission lines.

(Ord. 2000-936; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2004-1011, passed 1-5-04; Am. Ord. 2004-1028, passed 12-13-04; Am. Ord. 2006-1063, passed 9-5-06)

§ 152.223 CLEAR VIEW TRIANGLES.

(A) No building, structure, fence or planting may be erected inside a 50 foot clear view triangle between the rights-of-way of intersecting streets. This restriction does apply to fences under 30 inches or less or trees trimmed to a distance of at least seven feet above the curb line or to shrubs which do not exceed more than three feet in height and do not obstruct visibility across the above described triangle.

(B) *Driveways*. No fence may be erected inside a 30 foot clear view triangle between a public right-of-way and an access driveway.

(Ord. 2000-936)

§ 152.224 COMPLIANCE WITH FLOODPLAIN OVERLAY AND CRITICAL AREA OVERLAY.

All structures must comply with the requirements of the Floodplain Overlay and Critical Area Overlay where applicable.

(Ord. 2000-936)

§ 152.225 MAXIMUM HEIGHT.

(A) *Single and two-family dwellings*. The height of these buildings may not exceed three stories or 40 feet.

(B) *Townhouse and multiple family dwellings*. Height of these buildings may not exceed three stories or 40 feet. Proposed buildings may exceed this height by 150%, at the City Council's discretion, through the Site Plan Review process upon satisfactory demonstration that the proposal includes mitigation of any off-site impacts.

(C) *Non-residential buildings*. Height of buildings for non-residential uses in residential districts must be three stories or 40 feet. Non-residential buildings may exceed this height by 150%, at the City Council's discretion, through the Site Plan Review or Conditional Use Permit process upon satisfactory demonstration that the proposal includes mitigation of any off-site impacts.

(D) The following structures may exceed the three stories or 40 foot height limitations by 125% without a Conditional Use Permit:

(1) Personal radio and television antennas (including ham radio towers and antennas);

(2) Spires, bell towers, carillons, and steeples; and,

(3) Flag poles.

(Ord. 2000-936)

§ 152.226 LOWEST FLOOR ELEVATION.

The lowest floor elevation for any residential basement construction must be at or above the regulatory flood protection elevation. All non-residential basements must follow the requirements of §§ 152.320 through 152.325.

(Ord. 2000-936)

PERMITTED, CONDITIONAL, AND TEMPORARY USES IN RESIDENTIAL DISTRICTS

§ 152.240 PURPOSE.

The following subchapter establishes a listing of the permitted, conditional, and temporary uses for the residential zoning districts (R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-4A, R-5, R-6, and R-7). The uses have been allocated to the individual districts to allow reasonable use of properties in a manner that is compatible with the purpose of each residential zoning district and the overall purpose of this zoning code and the code of ordinances.

(Ord. 2000-936)

§ 152.241 PROPOSED DEVELOPMENTS SUBJECT TO SITE PLAN REVIEW REQUIREMENTS.

All proposed developments are subject to the Site Plan Review requirements found in §§ 152.033 through 152.039.

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03)

§ 152.242 PERMITTED AND CONDITIONAL USES.

Permitted and conditional uses for each residential zone are defined in the following table:

Figure 152.242.01 Uses in Residential Districts

"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted											
Use	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R-7
Bed and breakfast establishments	C	C	C	C	C	C	C	NP	NP	NP	NP
Care centers, convalescent homes, and assisted living	NP	NP	NP	NP	NP	NP	NP	NP	C	C	C
Cemeteries	C	C	C	C	C	C	C	NP	NP	NP	NP
Commercial recreational facilities (Privately owned)	C	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Daycare facilities, licensed (12 or fewer children) or group family daycare facilities (14 or fewer children)	P	P	P	P	P	P	P	P	NP	NP	NP
Daycare, licensed or group daycare facilities (13 to 16 persons)	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Domesticated and farm animals	P	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Dwellings, attached two-family	NP	NP	NP	NP	NP	NP	P	P	P	P	NP
Dwellings, detached single-family	P	P	P	P	P	P	P	P	NP	NP	NP
Dwellings, multiple family structures	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Dwellings, townhouses	NP	NP	NP	NP	NP	NP	NP	P	P	P	P

Dwellings, townhouses constructed before July 1, 1985	NP	NP	NP	NP	NP	NP	P	NP	NP	NP	NP
Farming and cultivation of agricultural products	P	P	P	P	P	P	P	P	P	P	P
Mobile home parks in conformance with § 152.244	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	NP

Figure 152.242.01 Uses in Residential Districts											
"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted											
Use	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R-7
Model homes	P	P	P	P	P	P	P	P	P	P	P
Offices related to leasing, renting and maintenance of multiple family dwellings and townhouses	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P
Religious institutions subject to §§152.180 through 152.182	P	P	P	P	P	P	P	P	P	P	P
Residential facility, licensed (6 or fewer persons)	P	P	P	P	P	P	P	P	NP	NP	NP
Residential facilities, licensed (7-15 persons)	NP	NP	NP	NP	NP	NP	NP	NP	C	C	C
Soil processing and mining	C	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Public and utility facilities in conformance with § 152.244	C	C	C	C	C	C	C	C	C	C	C
Seasonal (temporary) greenhouses and garden centers in compliance with § 152.362(D)	C	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP

(Ord. 2000-936; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2004-1012, passed 5-3-04)

§ 152.243 ADDITIONAL REGULATIONS FOR PERMITTED USES.

Some permitted uses are further regulated to promote the health, safety and general welfare. If these regulations are met, the use is

considered permitted subject to the Site Plan Review requirements in §§ 152.030 through 152.039.

(A) *Licensed daycare facilities.* All licensed daycare facilities must comply with §§ 152.160 through 152.164.

(B) *Keeping domestic and farm animals and beekeeping on residential properties.*

(1) Farm animals may be kept on parcels five acres or larger at the rate of one animal unit per acre.

(2) Boarding or breeding for commercial purposes may not be permitted in residential districts.

(3) The keeping of animals must be in conformance with all other sections of the City Code.

(4) Beekeeping is allowed in all residential districts in compliance with the applicable provisions of Chapter 92 of this code.

(C) *Detached single-family dwellings.* All new detached single-family dwellings must comply with the following conditions:

(1) All dwellings built after July 31, 1982, including manufactured or mobile housing, must include a basement as defined in § 152.008. The lowest floor elevation of any residential basement may not be lower than the regulatory flood protection elevation.

(2) No single-family dwelling may be constructed less than 25 feet wide, as measured along 50% of its length.

(3) Once the front yard has been established and an address determined, the building or yards may not be reversed.

(4) Minimum finished square footage. The minimum required finished floor area must comply with the following table:

Figure 152.243.02 Required Finished Square Footage

District	***Minimum Finished Square Footage (in Square Feet)***
R-1	1,040
R-2	1,040
R-2A	1,400 Ramblers 2,200 all other designs
R-2B	1,400 Ramblers 1,900 all other designs
R-3	960
R-3A	960
R-4	960

(D) *Attached two-family dwellings.* The conditions for the construction and zero-lot line subdivision of attached two-family dwellings are as follows:

(1) Attached two-family dwellings constructed before 1974 may be considered legal conforming uses without obtaining a Conditional Use Permit.

(2) All dwellings built after July 31, 1982, including manufactured or mobile housing, must include a basement as defined in § 152.008.

(3) No attached two-family dwellings may be constructed less than 20 feet wide.

(4) The units must be constructed in a side-by-side manner.

(5) Attached two-family dwellings may be divided into single parcels of record with the party wall acting as the dividing lot line

subject to the following conditions:

(a) Each of the lots created in subdividing lands on which a two-family structure is located may be equal in area or as near equal as is reasonably possible.

(b) Each lot created must contain no less than ½ the minimum land area requirement for a two-family dwelling, and may be shown on a registered land survey.

(c) Except for setbacks along the common property line, all other setback and yard requirements must be met.

(d) Separate services may be provided to each residential unit for sanitary sewer, water, electricity, natural gas, telephone, and other utilities.

(e) The units may be constructed in a side-by-side manner with each unit having direct access to a public street.

(f) The units may not be divided until a common party wall fire rating is brought up to new construction standards contained in the Uniform Building Code (UBC). The walls must provide sound transmission control ratings as per the UBC.

(g) The applicant or the property owner may execute and record at their expense a "Declaration of Covenants, Conditions and Restrictions". The declarations, covenants, conditions and restrictions provide direction to the property owners and the city on the following subjects:

1. Architectural design and treatments, construction materials, maintenance, landscaping and other restrictions.

2. Relationships among owners of adjoining living units and arbitration of disputes.

3. The authority to divide a single structure containing two dwelling units may be subject to Chapter 151 of the City Code relating to park dedication and other subdivision requirements and the Council may impose other reasonable conditions as required by the situation.

(E) *Townhouses*. All townhouses, attached or detached, must comply with the following conditions:

(1) All yard requirement areas must be free of encroachments, such as buildings, accessory structures and interior vehicular circulation systems. Driveways that provide direct access to the garage area are not considered an encroachment.

(2) All buildings within an attached townhouse development must be a minimum of 25 feet apart. In detached townhouse developments, minimum distance between units is 15 feet for living space and 10 feet for adjacent garages.

(3) Requirements for District R-4A and R-4B minimum finished square footage above grade are:

(a) 1,200 square feet (if constructed with a basement as defined in § 152.008).

(b) 1,400 square feet (if constructed without a basement as defined in § 152.008).

(c) A minimum of 120 square feet of contiguous interior storage area must be located on the lower floor or in the garage of any townhouse unit constructed without a basement. This storage area may not be used to fulfill the unit's minimum finished square footage requirement.

(4) A declaration of covenants, conditions and restrictions or the equivalent document shall be submitted for review and approval by the City Attorney. The declaration may include, but is not limited to, the following:

(a) A statement requiring that the deeds, leases or documents of conveyance affecting buildings, units, parcels, tracts, townhouses, or apartments are subject to the terms of the declaration.

(b) A provision for the formation of a property owners association or corporation and that all owners must be members of said association or corporation which may maintain all properties and common areas in good repair and which may assess individual property owners proportionate shares of joint or common costs. The association or corporation must remain in effect and may not be terminated or disbanded.

(c) Membership in the association shall be mandatory for each owner and any successive buyer.

(d) The open space restrictions must be permanent and may not be changed or modified without city approval.

(e) The association is responsible for liability insurance, local taxes and the maintenance of the open space facilities deeded to it.

(f) Property owners are responsible for their pro-rata share of the cost of the association by means of an assessment to be levied by the association that meet the requirements for becoming a lien on the property in accordance with Minnesota Statutes.

(g) The association may adjust the assessment to meet changing needs.

(5) No exterior trash receptacles or enclosures are allowed.

(6) In the Site Plan Review of new townhouse proposals, the following items may be evaluated and be in compliance with the city's goals and policies:

(a) Mailboxes and traffic around mail delivery areas.

(b) Trail connections and functional open space.

(c) Circulation systems.

(d) Architectural design and standards.

(7) For consideration of a development that exclusively provides a detached townhouse product, the city requires that the following design criteria be included in the site plan:

(a) The minimum development area shall be three acres;

(b) The maximum development area shall be 15 acres;

(c) An amenity plan shall be designed that is relevant to the housing proposed. Items may include, but are not limited to, tot-lots, picnic facilities, trails, sidewalks, gazebo, community room and fountains;

(d) Notwithstanding the density provisions of the land use plan, the site shall include a minimum of 50% green space. Of the total, 15% must be contiguous, usable upland that is addressed in the amenity plan.

(F) *Multiple family dwellings.* All multiple family dwellings built after July 24, 1995 must comply with the following conditions:

(1) Minimum floor area requirements:

	One Bedroom Units	***Two Bedroom Units***	***Three Bedroom Units***
R-5	680 square feet	750 square feet	900 square feet
R-6	600 square feet	750 square feet	900 square feet
R-7	850 square feet	1,000 square feet	1,150 square feet, with 150 square feet for each additional bedroom above three

(2) All multiple family dwellings built after July 24, 1995, must comply with the following conditions:

(a) A reduction of 300 square feet of lot area may be given for each enclosed parking space provided under the principal building.

(b) Minimum floor area requirements:

(1.) One bedroom units - 850 square feet;

(2.) Two bedroom units - 1,000 square feet;

(3.) Three bedroom units - 1,150 square feet'

(4.) Over three bedroom units - 1,150 square feet plus 150 square feet for each additional bedroom.

(3) A minimum 20 foot setback is required between driveways, drive aisles, or parking areas and any building.

(4) Controlled access entry systems are required for all multiple family buildings.

(5) No exterior trash receptacles or enclosures are allowed.

(6) In the Site Plan Review of new multiple family dwelling development proposals, the following items may be evaluated and be in compliance with the city's goals and policies:

(a) Mailboxes and traffic around mail delivery areas.

(b) Trail connections and functional open space.

(c) Circulation systems.

(d) Architectural design, treatments, and standards.

(e) Amenities.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2004-1028, passed 12-13-04; Am. Ord. 2015-1191, passed 5-18-15)

§ 152.244 CONDITIONAL USES.

No permit may be issued for construction of a structure that is intended to be used for conditionally permitted uses unless a Conditional Use Permit has been granted by the City Council in accordance with §§ 152.030 through 152.039. In addition, the following conditions apply to the applicable uses:

(A) *Mobile home parks.* Subject to the approval of a site plan which includes:

(1) Internal street system with all-weather hard surfaced roadways, to city standards, not less than 25 feet in width.

(2) All units must be connected to city sewer and water systems prior to occupancy.

(3) All hydrant locations must be approved by the city prior to occupancy of any units.

(4) All mobile homes must be setback a minimum of 25 feet from any internal roadway.

(5) Minimum lot size per mobile home must not be less than 40 feet wide x 100 feet long or 4,000 square feet.

(6) Each mobile home park must provide a recreation area(s) equal to 800 square feet per unit and a development plan must be submitted and approved. None of the 800 square feet must be included in the minimum lot calculation.

(B) *Public and quasi-public uses.* All uses must provide the following evidence:

(1) The use is in conformance with the surrounding neighborhood and required setbacks and side-yard requirements are met.

(2) Equipment is completely enclosed in a permanent structure with no outside storage, except for electrical substation structures.

(3) Adequate screening and landscaping from neighboring residential districts is provided.

(Ord. 2000-936)

§ 152.245 TEMPORARY USES.

This section allows for certain temporary uses that are accessory to the principal use in residential districts but are not regulated by any other section of this chapter. These temporary uses include, but are not limited to, model homes and temporary events.

(A) *Temporary events.*

(1) *Event permit required.* Permits are required for any event with temporary structures or tents, preparation and service of food or beverages for sale, road blockage, or traffic or parking congestion beyond that expected without the event for all uses in residential districts except single- and two-family dwellings and except for block parties in conjunction with a City of Brooklyn Park sponsored event. Permits will not be issued until these issues have been resolved and demonstrated in compliance with §§ 152.030 through 152.039 and all applicable City Codes to the satisfaction of the City Manager.

(2) *Performance standards for temporary events.* Temporary events include, but are not limited to, outdoor religious events and rental or employment fairs, but do not include construction activities related to the construction, demolition, or rehabilitation of a dwelling, building, or structure.

(a) *Duration*. Events are limited to ten days per calendar year and all equipment, structures, signs, or other evidence of the use must be removed from the property one week after termination of the event.

(b) Disturbed turfed areas must be restored to their pre-event condition within three weeks.

(c) Sanitary facilities must be provided as required by the Building Official.

(d) Any impairment to traffic flow must be mitigated to the satisfaction of the City Engineer, Fire Chief and the Police Chief.

(e) All other sections of the city code, including but not limited to compliance with residential quiet hours and the creation of nuisances, apply.

(B) *Model homes.* This section allows for the provision of model homes and temporary real estate offices in new subdivisions without adversely affecting the character of surrounding residential neighborhoods or creating a general nuisance. As model homes represent a unique temporary commercial use, special consideration must be given to the peculiar problems associated with them and special standards must be applied to ensure reasonable compatibility with their surrounding environment. All model homes and temporary real estate offices must comply with the following special requirements:

(1) Model home or temporary real estate office lighting must comply with §§ 152.110 through 152.114.

(2) Signs for model homes and temporary real estate offices must comply with the sign regulations as contained elsewhere in the City Code.

(3) The model home or temporary real estate office is permitted only until all the other lots in the subdivision have active building permits.

(4) The applicant for a model home may be required to submit a cash bond to guarantee the conversion of the model home to a single-family home in a timely manner if alterations to the site have occurred such as the provision of paved parking, removal of lighting, and similar uses. Such conversion includes, but is not limited to, the provision of landscaping, turf restoration and the removal of parking lots, signage and lighting.

(Ord. 2000-936)

RESIDENTIAL ACCESSORY USES AND STRUCTURES

§ 152.260 PURPOSE.

This subchapter provides standards that accessory uses and structures in residential districts are required to meet. These standards allow the property owner to use the property in ways that are normally associated with the principal residential use of the property and allow the city appropriate means to maintain the residential nature of neighborhoods. The accessory uses listed in § 152.262 are permitted in the individual residential zoning districts provided that:

(A) Such uses are subordinate and incidental to the principal residential use of the property.

(B) No accessory use is permitted that changes the residential character, rating or appearance of the lot or any structures on the lot.

(C) No accessory use or structure other than a fence or a temporary construction office for a project to be built on the property may be permitted in a residential district without a principal use occupying the property.

(D) There may be no exterior storage or display of equipment, materials or products except as permitted by this section and Chapter 150 of the City Code.

(Ord. 2000-936)

§ 152.261 ACCESSORY USES.

The following table provides a listing of accessory uses permitted in each residential district. Other similar uses must be reviewed by the City Manager. These uses may be further regulated in § 152.262.

Figure 152.261.01 Accessory Uses in Residential Districts

"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted

Accessory Use	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R-7
Antennas, satellite dishes and the like as regulated by §§ 152.090 through 152.096	P	P	P	P	P	P	P	P	C	C	C
Bed and breakfast establishments as regulated by §§ 152.240 through 152.245	C	C	C	C	C	C	C	C	NP	NP	NP
Community garden in conformance with § 152.262	P	P	P	P	P	P	P	P	P	P	P
Construction Debris Dumpster (Oversize), as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Daycare facilities, licensed (12 or fewer children) or Group family daycare (14 or fewer children) as regulated by §§ 152.160 through 152.164	P	P	P	P	P	P	P	P	NP	NP	NP
Daycare or group daycare facilities, licensed (13 to 16 persons) as regulated by §§ 152.160 through 152.164	NP	NP	NP	NP	NP	NP	NP	NP	P	P	P

Figure 152.261.01 Accessory Uses in Residential Districts

"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted

Accessory Use	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R-7
Daycare facilities, licensed. in schools and religious institutions as	P	P	P	P	P	P	P	P	P	P	P

regulated by §§ 152.160 through 152.164											
Emergency repair of motor vehicles and recreational vehicles as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Gas/Fuel tanks (above ground)	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Garage sales as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Garages, parking areas and spaces in compliance with §§ 152.140 through 152.146	P	P	P	P	P	P	P	P	P	P	P
Gardening, farming and cultivation of agricultural products	P	P	P	P	P	P	P	P	P	P	P
Ground source heat pump systems as regulated by § 152.187	P	P	P	P	P	P	P	P	P	P	P
Home vocations and avocations as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Live/work uses within a dwelling unit conformance with § 152.262						P	P	P	P	P	P
Outside storage of agricultural equipment as regulated as regulated by § 152.262	P	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Outside storage of recreational vehicles as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Parks and playgrounds, open spaces, natural areas (private)	P	P	P	P	P	P	P	P	P	P	P
Private residential recreational equipment	P	P	P	P	P	P	P	P	P	P	P
Public and private schools located within religious institutions as regulated by §§ 152.181 through	C	C	C	C	C	C	C	C	C	C	C

152.182											
Sale of agricultural products grown on the property	P	P	P	P	P	P	P	P	P	P	P
Sale of residential motor vehicles and recreational vehicles as regulated by § 152.262	P	P	P	P	P	P	P	P	P	P	P
Signs as regulated by Chapter 150 of the City Code	P	P	P	P	P	P	P	P	P	P	P
Solar energy system in conformance with § 152.187	P	P	P	P	P	P	P	P	P	P	P

Figure 152.261.01 Accessory Uses in Residential Districts											
"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted											
Accessory Use	R-1	R-2	R-2A	R-2B	R-3	R-3A	R-4	R-4A	R-5	R-6	R-7
Telecommunication towers as regulated in §§ 152.090 through 152.096	C	C	C	C	C	C	C	C	C	C	C
Temporary Portable Storage Containers	P	P	P	P	P	P	P	P	P	P	P
Waste and recycling storage as regulated in Chapter 98 of the City Code and § 152.263	P	P	P	P	P	P	P	P	P	P	P
Wind energy conversion system in conformance with § 152.186	P	P	P	P	P	P	P	P	P	P	P

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2007-1070, passed 3-26-07; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.262 ADDITIONAL STANDARDS FOR ACCESSORY USES.

Certain permitted accessory uses have characteristics that require regulation by the city to assure compatibility with other residential properties and neighborhoods. The following accessory uses must comply with all sections of the City Code, this section of the chapter, and the following established regulations for the use:

(A) *Motor and recreational vehicle and equipment sales.*

(1) The vehicle(s) must have current registration plates.

(2) The vehicle(s) must be licensed to a resident of the property.

(3) The vehicle(s) must comply with the parking requirements in all applicable sections of the City Code and this chapter.

(4) No more than two vehicle and equipment sales may be permitted per parcel per calendar year.

(B) *Vocations and avocations in residential districts.*

(1) *Repair services.* Repair services are limited to those appliances or other goods small enough to be carried by one person. Motor and recreational vehicles and equipment and small engine repair are not permitted except for minor emergency repairs and minor maintenance to autos, non-commercial trucks, or recreational vehicles and equipment that are licensed to residents of the property, provided they can be completed within a 24-hour period or are conducted inside a garage or accessory structure and are in compliance with the City Code. Vehicle painting will not be permitted in residential districts.

(2) *Deliveries*. Deliveries are limited to the type that typically service residences. Such traffic and parking needed for deliveries must comply with §§ 152.140 through 152.146, and all other applicable sections of the City Code.

(3) *Employees*. The use may be carried out by the residents of the dwelling unit and no more than one nonresident employee.

(4) *Sales*. No retail sale of merchandise produced off-site is permitted, except those products that are not marketed and sold in wholesale or retail outlets.

(5) *Parking*. Parking for clients or customers coming to the property must comply with §§ 152.140 through 152.146, and all other applicable sections of the City Code and are limited to five vehicles at any one time. Storage or overnight parking of commercial vehicles, including tow-trucks, is prohibited unless further regulated in this section.

(6) *Permits required.* All vocations based in a dwelling unit must have an administrative permit.

(7) *Nuisances*. No use may use or create noise, dust, vibration, odor, glare, electrical interference, fire hazards, garbage, hazardous chemicals that exceed standards published in the City Code, or by the PCA or Department of Health standards; and traffic or parking congestion to a degree that cannot be proportionally accommodated by adjacent street or private driveways and garages, or any other public health, safety or general welfare hazard or nuisance to any greater or more frequent extent than that usually experienced in an average dwelling unit or private garage, sewer or water services; under normal circumstances wherein no vocation or avocation exists in the zoning district where the vocation or avocation exists, except as superceded by state or county ordinance, statute, or law.

(8) All vocations and avocations must adhere to any and all applicable city, county, state, and federal regulations. Vocations and avocations which violate or can not operate in compliance with those regulations are prohibited.

(9) Any hazardous materials handling permits must be reported to the City Manager or his/her designated agent.

(C) *Garage sales.*

(1) Each property is limited to four garage sales per year.

(2) Each sale is limited to three days.

(3) Signs must be in conformance with Chapter 150 of the City Code.

(D) Exterior (outdoor) storage of goods, equipment, materials, vehicles, and the like are not permitted except for the following:

(1) *Firewood storage.* Firewood must be stacked on an impervious surface or be elevated at least three and a half inches off of the ground, and may not include more than two cords of wood per property. Unrestrained stacks may not exceed six feet in height. Firewood stacks located next to structures and supported by restraints, may not exceed ten feet in height and may be so contained as not to constitute a safety hazard, as determined by a Zoning Enforcement Officer. Firewood storage must comply with accessory structure setbacks in §§ 152.220 through 152.226.

(2) Commercial vehicles and equipment may not be stored on properties zoned residential, except for the following:

(a) One non-commercial vehicle with an attached snow plow can be parked outside of an enclosed building in compliance with all other City Codes.

(b) Taxis and limousines are allowed to be parked in compliance with §§ 152.140 through 152.146 and this section with the

following restrictions:

1. One vehicle per property.

2. The vehicle must be less than 30 feet in length.

(3) *Agricultural equipment.* Storage of agricultural equipment may be permitted only on land assessed, used, and zoned as agricultural and must comply with all other applicable sections of the City Code.

(4) Equipment, materials and dumpsters may be stored outside if in compliance with the following:

(a) All items must be directly related to a current on-site construction or landscaping project;

(b) Except as otherwise allowed in division (c) below, no items may be stored outside for more than three months in any calendar year;

(c) All items directly related to a project for which a valid building permit has been issued are allowed to be stored outside while the permit is active;

(d) All debris must be contained within the dumpster and prevented from becoming airborne;

(e) All items must be located on private property and must not block sidewalks, trails, hydrants or emergency access;

(f) All items must be immediately removed from the property upon completion of the current on-site project;

(5) Private outdoor recreational equipment provided the equipment is not for display, storage or sales in connection with any vocation except a daycare.

(6) *Outdoor storage of recreational vehicles, recreational equipment and trailers.* "Private outdoor recreational equipment" as defined by this chapter is exempted from this subsection. Storage of recreational vehicles, recreational equipment, and trailers must meet the following standards:

(a) *Front yard storage.*

1. Items stored in the front yard must be located on a continuous impervious surface. Storage is not allowed on landscaped or grass areas in the front yard.

2. All front yard storage must not encroach on any sidewalk or obstruct visibility of vehicle or pedestrian traffic.

(b) *Gravel parking surface requirements.* Where gravel parking surfaces are allowed, each of the following conditions must be met:

1. A minimum depth of three inches of Class V gravel or equivalent must be installed; and

2. An edging material must be provided or other approved method must be used, and maintained to contain the gravel in the designated parking pad.

(c) *Existing gravel driveways.* For properties where gravel driveways existed prior to November 10, 1989, a gravel parking surface, meeting the specifications in subpart (b) is allowed for front yard storage. When driveways are upgraded to a continuous, impervious surface, other storage surfaces existing on that property must meet the surface requirements indicated in subpart (a).

(7) *Ownership.* Vehicles, equipment and other items stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time or persons on military leave, but still claim the property as their legal residence, will be considered residents on the property. This does not include vehicles or equipment being used by occasional guests.

(E) *Temporary portable storage containers.*

(1) One temporary portable storage container is allowed per dwelling unit for a maximum of 30 consecutive days in a calendar year.

(2) The storage container must be located on the driveway of the dwelling unit it is serving. An alternate location may be approved by the City Manager.

(F) *Gardening.*

(1) If a home garden is present it shall be maintained by one or more individuals who reside in a dwelling unit located on the subject property. Food and/or horticulture products grown in the home garden may be used for personal consumption. A home garden is an accessory uses to a principal residential uses and must comply with the lot and building standards for its zoning district.

(G) *Community garden.*

(1) All community gardens shall comply with § 152.184.

(H) *Live/work uses.*

(1) The residential portion of a live/work use shall not occupy more than 50% of the entire square footage of the structure/or unit.

(2) The residential portion of the live/work uses, if located on the ground floor, shall be completely located behind the commercial portion of the structure or unit such that the ground floor street façade is a commercial use and commercial façade.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2013-1163, passed 10-21-13; Am. Ord. 2015-1189, passed 3-23-15; Am. Ord. 2014-1184, passed 10-20-14; Am. Ord. 2015-1190, passed 4-28-15)

§ 152.263 ACCESSORY STRUCTURES.

(A) Accessory structures secondary to primary uses that required a Conditional Use Permit or those that require a Formal Site Plan Review may also be considered Conditional or needing Formal Site Plan Review and may be subject to the applicable standards listed in division (B) below.

(B) Standards for accessory structures (except fences and walls).

(1) Accessory structures must conform to the following:

(a) *Front setbacks.* No accessory structures are permitted between a public right-of- way and the dwelling or principle use, except garages which must adhere to the same setbacks as the principal building as described in §§ 152.220 through 152.226.

(b) *Interior side or rear setbacks.* No accessory structures are permitted closer than five feet from interior side property lines. Except in the R-2A and R-2B districts where garages must be ten feet from interior side property lines.

(c) *Side or rear setback adjacent to public right-of-way.* Same as for the principal building as described in §§ 152.220 through 152.226.

(2) Any accessory structures sheltering or housing more than two animal units on a farm, hobby farm, or the like may not be less than 50 feet from all dwellings other than that of the owner.

(3) *Structure size.* On any lot zoned R-1, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-4A, or guided for residential under the PCDD or PUD, the combined floor area of all accessory structures (including the attached or detached garage) may not exceed the following:

(a) For lots one acre or less: 1,000 square feet or the foundation footprint of the habitable portion of the principle building, whichever is greater.

(b) For lots greater than one acre: 1,500 square feet or the foundation footprint of the habitable portion of the principle building, whichever is greater.

(4) *Accessory structure height.* A maximum of 18 feet or the height of the principle building, whichever is less. The highest point of the roof of the accessory structure shall not be higher than the highest point of the roof of the principle structure. Accessory structures for non- residential uses may exceed this height, up to a maximum of 22 feet, through the Conditional Use Permit process upon demonstration that the proposal includes mitigation of any off-site impacts.

(5) No lot of record may have more than two detached accessory structures, except public parks and open space.

(6) *Accessory structures in the Flood Hazard Area Overlay*:

(a) Accessory structures shall not be designed for human habitation.

(b) Accessory structures shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters:

1. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow: and

2. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(c) Accessory structures shall be elevated on fill or structurally dry flood proofed to the regulatory flood protection elevation in accordance with the State Building Code. As an alternative, an accessory structure may be wet flood proofed to the flood proofing classification in the State Building Code provided the accessory structure constitutes a minimal investment and does not exceed 500 square feet in size. All flood proofed accessory structures must meet the following additional standards:

1. 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;

2. Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed; and

3. 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 door prior to flooding will not satisfy this requirement for automatic openings.

(C) *Residential fencing and walls.*

(1) Fences or walls which detain or inhibit the flow of surface water drainage to and from abutting properties is prohibited.

(2) *Setbacks.*

(a) *Front.* Fences and walls more than 42 inches in height must be setback 15 feet from the property line. Multiple family dwelling developments or townhouse developments may have wrought iron (or similarly designed) fences constructed up to the front property line with the approval of the City Manager.

(b) *Interior side or rear.* No setback.

(c) *Side or rear abutting public right-of-way.* Fences and walls must be setback 15 feet from the property line and restricted for traffic visibility unless they qualify for one of the following exemptions. Fences may be allowed up to the property line if:

1. Properties are located on corners with controlled intersections, (i.e. stop signs or stop lights).

2. Fence or wall does not encroach into the clear view triangle as defined and regulated in § 152.223.

(3) *Access required.*

(a) *Detached single- and attached two-family dwellings.* Where any fence connects to a building at least one gate with a minimum width of two feet, six inches is required to allow access around the building.

(b) *All other uses.* Plans for fences and gates controlling access to the property must be approved by the Police and Fire Departments before construction begins.

(4) *Fence height.* No fence may exceed eight feet, six inches as measured from the top of the fence or supports to grade. Exceptions to this height may be made for fences enclosing tennis courts and other similar recreational uses or as may be required elsewhere in the City Code.

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2011-1127, passed 7-25-11)

§ 152.264 TEMPORARY FAMILY HEALTH CARE DWELLINGS.

The city opts out of the requirements of M.S. § 462.3593, which defines and regulates temporary family health care dwellings.

(Ord. 2016-1206, passed 8-22-16)

RESIDENTIAL LANDSCAPING STANDARDS

§ 152.270 PURPOSE.

The purpose of establishing minimum landscape standards is to enhance the city's environmental and visual character for its citizens' use; and enjoyment; preserve and stabilize the ecological balance in the city; establish a healthy environment by using vegetation to mitigate pollution's ill-effects; safeguard property values; protect public and private investments; and promote high quality development in the city.

(Ord. 2000-936)

§ 152.271 LANDSCAPE PLAN REQUIRED.

Prior to the issuance of a building permit for new construction of a structure in any residential townhome or multiple family district, or a structure for a non-residential use in a residential district, a landscape plan must be submitted for review and approval to the City Manager in compliance with the Site Plan Review process in §§ 152.030 through 152.039. Review and approval of a landscape plan may also be required for new parking lots and changes to existing parking areas that affect more than four stalls prior to issuance of any permits.

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03)

§ 152.272 INSTALLATION OF LANDSCAPE MATERIALS.

All landscaping elements must be installed with professional horticultural standards as established with the most current edition of the Landscape Construction Reference Manual as published by the Minnesota Nursery and Landscape Association within 90 days of the issuance of the Certificate of Occupancy, or by June 15 for homes for which a Certificate of Occupancy is issued between September 1 and March 1.

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03)

§ 152.273 MINIMUM REQUIRED OPEN SPACE.

Each lot may have, at a minimum, the percentage open space shown in the following table. These areas may not be covered by a building or other impervious surface, and must be landscaped with sod, gardens, natural areas, landscape rock or mulch, trees and shrubs, or similar landscaping materials. Areas used for demonstrated parking can not be used to fulfill the open space requirement.

Figure 152.273.01 Minimum Required Open Space

	Single and Two-Family Dwellings	Townhouse Developments (May be placed in private lots or in common areas)	Multiple Family Dwellings and Non-Residential Uses in Residential Districts
Minimum Open Space	25% total, to include a minimum of 50% of front yard	40%	40%
Parking Areas	Not Applicable	10% of interior parking lot area. This area counts towards total green area of the site.	

(Ord. 2000-936; Am. Ord. 2003-1008, passed 11-3-03)

§ 152.274 MINIMUM TREE AND SHRUB QUANTITIES.

(A) All developments and subdivisions that occur in the residential districts after the effective date of this chapter may be required to provide the minimum number of trees and shrubs as specified in the following table:

Figure 152.274.02 Minimum Required Tree and Shrub Requirements

Vegetation Type	Size	Single and Two-Family Dwellings	Townhouse Developments (May be placed in private lots or in common areas)	Multiple Famil Dwellings and Non-Residentia Uses in Residential Districts
Overstory deciduous trees	2" bb (Caliper)	2 in the front yard, 1 of which must be within 1 foot of the front property line, 3 additional on property	5 per unit or 1/40 lineal feet of site perimeter, whichever is greater	2/Dwelling or 1/1,000 gross square feet of building area (grade level floor) or 1/40 lineal feet of si perimeter, whichever is greater
Coniferous trees	6' bb	May be substituted for any of the overstory deciduous trees except the front yard tree at the property line	May be substituted on a 1 for 1 basis for the overstory deciduous trees	Minimum of 30 of required overstory trees must be coniferous
Ornamental deciduous trees	1.5" bb (Caliper)	2 may be substituted for 1 overstory tree	1 per unit required. 2 additional may be substituted for 1 overstory (maximum substitution = 50% of required overstory trees)	2 may be substituted for overstory (maximum substitution = 50% of require overstory trees
				1/300 gross square feet of building footpri

Understory shrubs	3 gal. potted or 18"	10 per unit	5 per unit	area or 1/30 lineal feet of si perimeter, whichever is greater

(B) *Additional landscape requirements:* All portions of a site that are not covered by a building, hardsurface coverage or water on a permanent basis must be planted with ground cover and landscaping materials.

(1) *Ground cover.* All site areas must be covered with sod from curb(s) to all interior property lines. Seeding may not be permitted. Rock and mulch may be substituted for sod in landscaping planting beds and along the perimeter of buildings. Native plant communities may be reestablished as a part of a Site Plan Review in compliance with all other sections of the City Code. Exceptions:

(a) Areas for gardens, decorative landscape plantings, and/or native plant communities.

(b) Developments in the Urban Reserve District (R-1).

(c) Berms, swales, drainage ponds, and the like with slopes greater than 4 to 1.

(2) *Top soil.* Prior to sodding, all single-family and two-family lots subdivided after the effective date of this chapter must have a minimum of three inches of black dirt as topsoil.

(3) *Intersection visibility.* All landscape materials must comply with the intersection visibility requirements of §§ 152.220 through 152.226.

(4) *Utility interference.* Overstory trees may not be installed underneath overhead utility lines nor may any landscape materials be installed over utility lines except in compliance with city policy.

(5) *Irrigation.* All sodded or landscaped areas for multiple family dwellings, townhouses, or non-residential uses must have and maintain irrigations systems, including landscaped parking islands and boulevards.

(C) *Quantity credits.* Existing healthy trees that are not susceptible to disease, alternate sized trees, or decorative landscaping may be credited toward the required trees detailed in division (A) and the additional trees required for screening as defined in § 152.275. The following table establishes the landscaping credits.

Figure 152.274.03 Credits

Vegetation Type	Size	Exchange Credit
Existing trees	2" bb (Caliper)	1 tree
	4" bb (Caliper)	2 trees
New larger trees	4" bb (Caliper) or 14' Coniferous	2 trees
Smaller trees	min. 1½" bb Deciduous	2 smaller trees for 1 overstory tree. Maximum substitution = 50% of required overstory trees
Shrubs (non-residential uses only)		10 shrubs for 1 tree (1½" bb ornamental or 2" bb overstory or 6' coniferous)
Decorative Landscape		Exterior sculptures, fountains, decorative walks, courtyards and/or additional ponds beyond those required, shown on a

Yard		landscape plan that meets the intent of this section to the satisfaction of the City Manager

(Ord. 2000-936)

§ 152.275 SCREENING.

Screening may be accomplished through the use of screen fences, walls, earth berms (not to exceed slopes of 4:1), and/or landscape plantings consisting primarily of evergreens. Must achieve 80% opacity year round. Fences and walls are regulated elsewhere in this chapter.

(A) Residential uses must be screened from all non-residential mechanical or accessory uses, including, but not limited to, exterior storage areas, accessory buildings, waste service areas, exterior loading, service areas, mechanical areas, and rooftop equipment. Screening must be a minimum of six feet in height at installation.

(B) All multiple family dwellings and non-residential mechanical or accessory uses, including, but not limited to, exterior storage areas, exterior loading, waste service areas, mechanical areas, and rooftop equipment, must be screened as follows:

(1) The above may be screened using a parapet, wing-wall or other architectural feature that is an integral part(s) of the building.

(2) Screening may incorporate similar architectural features as the building, the same exterior materials as the principal structure, and designed so that the equipment is not visible from any public right-of-way or other residential development.

(3) Incidental equipment deemed unnecessary to be screened by the City Manager must be of a color to match the building, roof, or the sky, whichever is more effective as screening.

(4) Metal cabinets used to enclose and protect mechanical equipment may not substitute as screening.

(5) Landscaping may be used as additional screening for equipment that cannot be effectively screened with materials matching the design of the building, at the discretion of the City Manager.

(C) All townhouses, multiple dwelling, and non-residential uses must screen their exterior storage areas, waste service areas, exterior loading docks, service areas, mechanical areas, rooftop equipment and other similar areas.

(D) Rear or side yard screening areas for all multiple frontage lots or lots adjacent to the North Hennepin Regional Trail. The rear or side yards of all residential multiple frontage lots of all lots subdivided or developed after the effective date of this chapter, must be screened from the abutting public right-of-way. The plant materials used to screen the rear or side lots must also satisfy the requirements of § 152.274. The berming and landscaping must be located in the required areas as defined below and comply with the associated minimum height and depth requirements when installed:

Figure 152.275.04 Additional Screening for Residential Properties

Along ...	Height of Berming (in feet)	Depth of Berms or Landscaped Area (measured in feet from the property line on private property) See Alternate Requirements Below	Amount of plant materials
Principal and "A" Minor Arterials	6	50-foot bermed and landscaped area	4 coniferous trees and 3 deciduous trees

"B" Minor Arterials and Class I Collectors	3	25-foot landscaped area	4 trees and 5 shrubs
North Hennepin Regional Trail	NA	20-foot landscaped area	4 coniferous trees and 3 deciduous trees

(E) *Alternative screening*. The City Council may approve decorative fencing and landscaping meeting minimum opacity requirements of § 152.275 in lieu of the berming requirements of § 152.275.04.

(Ord. 2000-936; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-997, passed 5-12-03)

§ 152.276 NON-RESIDENTIAL USES IN RESIDENTIAL ZONING DISTRICTS.

Non-residential uses located within residential zoning districts must adhere to the B1 Zoning District landscaping requirements of §§ 152.370 through 152.379.

(Ord. 2008-1085, passed 3-24-08)

RESIDENTIAL ARCHITECTURAL STANDARDS

§ 152.290 PURPOSE.

Because buildings have a life expectancy beyond that of the original owner or tenant, it is the city's goal to encourage the construction of quality structures that exhibit an attractive appearance both to residents and potential future owners.

(Ord. 2000-936)

§ 152.291 GENERAL REQUIREMENTS.

(A) *Residential additions and accessory buildings*. All facades of new additions and accessory structures must be coordinated with the facades of the principal building by integrating some or all of the same materials, textures and colors.

(B) *Exterior surfaces*. All exterior surfaces must be finished with the appropriate sealant, stain, paint, or other process (to manufacturer's specifications) to withstand the elements and prevent fading, chipping, chalking, cracking, peeling, warping, rot, rust, water damage, or other natural degrading process, with the exception of those materials, like copper, where the degrading process is architecturally desirable. This includes the following prohibitions:

(1) *Metals*. The following metals are prohibited as facade materials:

(a) Any metal roof that has exposed fasteners, semi-concealed fasteners on a facade, or any fastener system that does not adhere directly to the support system.

(b) Any metal that is not a high-quality commercial thickness/weight (for example, the minimum for architectural steel panels is .024 thickness, architectural aluminum panels is .032 thickness and architectural copper panels is 16 ounce sheets, and the equivalent in other metals).

(c) Any metal that has not been treated with a factory applied color coating system against any applicable degradation listed above.

(d) Metal of any kind as a primary facade material (excluding steel or aluminum lap siding). Metal may be used for trim or accent up to 15% of any facade.

(e) Metal is prohibited for use as a facade material for accessory structures. This prohibition includes, but is not limited to, trailers or recreational vehicles that have been converted to buildings or storage structures under the UBC, anchored, and used for storage. This prohibition does not include steel or aluminum lap siding.

(2) Smooth concrete block is prohibited as a primary facade material. Smooth concrete block used as part of the foundation may be permitted to be exposed at up to 15% of any facade.

(3) Non-durable siding materials such as plywood, corrugated metal or fiberglass, or other materials that decay rapidly when exposed to the elements are prohibited as a facade material.

(C) *Finished sides of fences and walls.* If the visible facade material is not finished on both sides, the finished side of the material must be on the outside, facing the abutting or adjoining properties and all posts or structures supporting the fence or wall must be on the inside.

(D) *Northern Growth Area.* All homes constructed in the R-2A and R-2B Zoning Districts after November 26, 2001, shall establish architectural covenants consistent with city architectural and development guidelines. The covenants shall remain in existence until issuance of the final certificate of occupancy for all platted property. All properties must adhere to the *City of Brooklyn Park Northern Growth Area Single Family Residential Development Guidelines and Policies* dated November 26, 2001.

(Ord. 2000-936; Am. Ord. 2001-961, passed 11-26-01; Am. Ord. 2013-1158, passed 7-15-13)

§ 152.292 USE SPECIFIC REQUIREMENTS.

(A) All non-residential uses in residential districts may be regulated by the standards in §§ 152.390 through 152.393.

(B) *Fences.*

(1) *Prohibited fence materials.* Electric, concertina or barbed wire, or chicken wire fences are prohibited.

(2) *Restricted fence materials.*

(a) Silt and other construction fences must be removed from the property at project completion.

(b) Snow fences may not be installed before November 1st and must be removed from the all properties by April 1st. If snow is present within one foot of the fence location, the presence of the snow fence may be maintained at the discretion of the City Manager.

(c) Chain link fences must have a top rail and posts must be spaced at intervals not to exceed ten feet.

(d) Chain link fences in the front yard must have a black, brown, or green vinyl coating. Bare galvanized chain link fences are not allowed in front yards. Privacy slats are not allowed in chain link fences in the front yard.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2011-1127, passed 7-25-11; Am. Ord. 2013-1158, 7-15-13)

§ 152.293 MAINTENANCE.

All surfaces must be maintained with the appropriate seal, stain, paint, or other process (to manufacturer's specifications) to withstand the elements and prevent fading, chipping, chalking, cracking, peeling, warping, rot, rust, water damage, or other natural degrading process, and are not allowed to become or remain in an unsafe condition as defined by the Uniform Building and Fire Code.

(Ord. 2000-936)

§ 152.294 MINIMUM DESIGN AND SITE REQUIREMENTS FOR MEDIUM AND HIGH DENSITY RESIDENTIAL DISTRICTS.

(A) *Purpose.* Medium and high density housing is an important element in the overall housing choice in the City of Brooklyn Park. These types of developments are varied and can include small lot single-family, attached townhome and stacked multi-family. To ensure high quality development, buildings and internal community areas minimum design and site requirements have been prepared and shall apply to all new developments in the R-4, R-4A, R-5, R-6, R-7 residential districts and the Village Zoning District. Specific site design, landscaping and pedestrian amenities will help to create an active, comfortable, livable community and a shared sense of ownership among residents.

(B) It is the intent with these standards to provide requirements to help developers achieve high quality residential construction. It is

not intended to dictate designs that may not be appealing because they are forced to meet a certain mix of materials. Distinctive architecture with unique design style is encouraged and will be considered if shown to meet the intent of the ordinance. While the requirements stated in this section shall apply to all new construction, in the districts listed above, additional policies shall also be considered including the following:

(1) Homes (as related to single-family, twin homes, and townhomes), in proximity to each other shall not look alike in terms of color, siding, accent and roofing materials. To maintain variety in colors and materials the home under consideration should be compared to the two homes on the two lots on either side of it and to the three homes directly facing it.

(2) Home design should minimize the use of elevations that have a garage forward design ("snout houses").

(3) New multi-family development shall be amenity rich catered to the targeted population of the development.

(4) Neighborhoods shall be designed to be connected and accessible to promote active living.

(C) Neighborhood outreach shall be provided per the adopted Multi-Family Housing Community Outreach Policy.

(D) Minimum building design standards for small lot detached single-family or two-family homes (as part of an association) in the R-4 district, shall be constructed with the following design elements:

(1) *Front elevation:*

(a) Each front elevation shall have a minimum of 30% comprised of natural material consisting of brick, stone, stucco, hardi-board, redwood, cedar or other similar materials.

(b) Homes on corner lots must relate to both streets with windows, accent and building articulation.

(c) Prominent front entry, including but not limited to, covered entry, front porch or similar accent shall be incorporated into the overall front elevation.

(d) Design of front exterior elevations shall be varied within the development with a minimum of five different styles provided.

(e) Two-family attached buildings shall be articulated to break up the building faced on all elevations. Rooflines and building elevations shall be articulated to break up the mass of buildings.

(2) *Garages:*

(a) Single-family and two-family homes shall include a garage that is a minimum of 480 square feet in size.

(b) Side entry garages are encouraged where feasible.

(c) Garage shall not comprise more than 55% of the viewable ground floor street-facing linear building frontage. This standard is based on the measurement of the entire garage structure and not on a measurement of the garage door or doors only. Corner lots are exempt from this requirement.

(d) Garage doors shall be architectural styled to match the exterior design of the home.

(3) *Roof:*

(a) Architectural design roofing materials including composition, wood shingles (including shake), architectural asphalt shingles, concrete, clay or ceramic tile roofs are required on all roofs.

(b) Overhangs must be a minimum of 12 inches.

(c) No bright or garish shingles are allowed.

(4) *Side and rear facades:*

(a) Each side elevation that faces an interior lot shall have at least one window or door opening which cannot be garage. Where a side elevation faces a street or is visible from a public street, at least two windows or door openings, which cannot be a garage, shall be provided. Alternatives may be considered for LEED or other efficiency standards.

(b) A maximum of 18 inches of the foundation wall may be exposed on any elevation.

(5) *Setbacks: front yard:* The front yard setback for a single-family or townhome shall meet the requirements in § 152.222. The setback may be reduced down to a minimum of 20 feet if the following conditions are met:

(a) The setback reduction is for an attached living area or porch to the front entry of the principal structure, not including the garage, which does not exceed a total of 240 square feet of above grade finished livable space.

(b) The exterior materials of the proposed living area or porch are consistent or complementary in color, texture and quality with those visible at the front of the dwelling.

(c) The roof of the proposed living area or porch is properly proportioned to and integrated with the roof of the dwelling.

(6) *Subdivision requests:* Building elevations and floor plans shall be furnished with subdivision requests illustrating exterior building material and colors to demonstrate compliance of this section.

(E) *Minimum design standards for townhomes structures including row style, back to back, multi-story (not stacked) or one level attached.*

(1) *Design character:* A high quality of building design is an important way to bring larger buildings into a traditional neighborhood scale.

(2) *Subdivision requests:* Building elevations and floor plans shall be furnished with subdivision requests illustrating exterior building material and colors to demonstrate compliance of this section. Building floor plans shall identify the interior storage space within each unit.

(3) *Decks or porches:* Provision shall be made for possible decks, porches or additions as part of the initial dwelling unit building plans. The unit lot shall be configured and sized to include decks or porches.

(4) *Minimum overhang:* In case of a gable roof, a minimum 12-inch soffit shall be required.

(5) *Exterior building finish:* The exterior of attached townhome dwelling units shall include a variation in building materials which are to be distributed throughout the building facades and coordinated into the architectural design of the structure to create an architecturally balanced appearance. In addition, attached townhome dwelling structures shall comply with the following requirements:

(a) A minimum of 30% of the combined area of all building facades of a structure shall have an exterior finish of brick, natural or artificial stone.

(b) Except for brick, natural or artificial stone, no townhome dwelling structure shall have more than 60% of all building facades of one type of exterior finish. Other acceptable materials includes maintenance free metal or vinyl siding, glass, stucco, and cement fiber siding.

(c) For the purpose of this section and material calculations:

1. The area of the building facade shall not include area devoted to windows, entrance doors, garage doors, or roof areas.

2. Variations in texture or style (i.e., lap siding versus shake shingle siding) shall be considered as different materials meeting the requirements of this section.

3. Integral colored split face (rock face) concrete block shall not qualify for meeting the brick, stucco and/or natural or artificial stone material requirements.

4. Multiple unit buildings in proximity to each other shall not look alike in terms of color of siding, accent and roofing materials. The building under consideration will be compared to two homes on two lots on either side of it and to the three homes directly facing it.

(6) *Facades and walls:* Each attached townhome dwelling unit shall be articulated with projections, recesses, covered doorways, balconies, covered box or bay windows or other similar features, dividing large facades and walls into human scaled proportions similar to adjacent single-family dwellings.

(7) *Garages:* Each dwelling unit shall include an attached garage.

(a) Garages shall comply with the following minimum size standards:

1. For dwellings with basements: 480 square feet.

2. For dwellings without basements: 480 square feet with an additional 120 square feet for storage.

(8) *Roofs:* Each attached townhome building shall feature a combination of primary and secondary roofs. Primary roofs shall be articulated by at least one of the following elements:

(a) Changes in place and elevation.

(b) Dormers or gables.

(c) Transitions to secondary roofs over entrances, garages, porches, bay windows.

(d) Architectural design roofing materials including composition, wood shingles (including shake), architectural asphalt shingles, concrete, clay or ceramic tile roofs are required on all roofs.

(e) Overhangs must be a minimum of 12 inches.

(f) No bright or garish shingles are allowed.

(9) *Side and rear facades:*

(a) Four sided architecture shall be used for all new townhome construction when located on or visible from an arterial roadway or public park. Accenting materials and design elements shall be uses on all facades.

(b) Each side elevation shall have at least one window or door opening which cannot be garage. Alternatives may be considered for LEED or other efficiency standards.

(c) A maximum of 18 inches of the foundation wall may be exposed on any elevation.

(10) *Setbacks:* Setbacks shall follow the requirements in § 152.222 with the following exceptions:

(a) For townhomes, approved as part of a master site plan, using build-to-lines, the front yard build-to-line shall be established as part of the master site plan and may be reduced to zero feet.

(b) *Residential uses on first floor:* Whenever residential uses are included on the first floor, the first floor elevation shall be a minimum of two feet six inches above the sidewalk elevation immediately adjacent to the front of the residential unit. In addition, each first floor unit must have an individual private entrance at street level.

(F) *Minimum design standards for multi-family (stacked units) residential units.*

(1) *Design character:* Minimum design standards in this section pertain to multi-family stacked units including condominiums and apartments. The scale of these building types makes them highly visible thus it is critical to incorporate high quality architecture. Building materials shall be attractive in appearance, durable, and of a quality which is both compatible with adjacent structures. All buildings shall be of good aesthetic and architectural quality, as demonstrated by the inclusion of elements such as accent materials, entrance and window treatments, contrasting colors, irregular building shapes and rooflines, or other architectural features in the overall architectural concept.

(2) *Subdivision requests:* Building elevations and floor plans shall be furnished with subdivision requests illustrating exterior building material and colors to demonstrate compliance of this section. Building floor plans shall identify the interior storage space within each unit.

(3) *Exterior building finish:*

(a) Major exterior surfaces on all walls shall include a minimum of 60%, of the combined area of all building facades of a structure, shall contain the following permitted major exterior materials: face brick (glazed or unglazed), clay faced tile, stone masonry (granite, limestone, marble, slate, sandstone, or quartzite) and other comparable materials as approved by the city.

(b) Accent materials may include: finished texture stucco (cement or synthetic), exterior finished wood siding (painted, stained, or weather sealed), exterior finished metal siding (not including sheet metal of any kind), exterior finished vinyl siding or fiber cement siding in lap or panel design (color impregnated or painted). Panel seam lines shall be architecturally integrated into the building design so that they are not visible. Seam lines can either be filled, covered with accent material or some other method to make seam lines invisible. Accenting materials and design shall be included on all facades.

(c) All building and roofing materials shall meet current accepted industry standards, and tolerances, and shall be subject to review and approval by the city for quality, durability, and aesthetic appeal. The applicant shall submit to the city product samples, color building elevations, and associated drawings which illustrate the construction techniques to be used in the installation of such materials.

(d) If complementary building styles, materials, and color schemes are proposed for a development, the developer shall submit to the city a plan showing the distribution of the styles, materials, and colors throughout the development.

(e) Building elevations shall be articulated to reduce the mass of the building. Large blank exterior walls shall be prohibited.

Variation in elevations can be accomplished with projections, recesses, covered doorways, balconies, covered box or bay windows or other similar features, dividing large facades and walls into human scaled proportions.

(f) There shall be no height maximum for stacked multi-family; however, the proposed height and building design will be reviewed through the site plan review process and shall be compatible in scale and design with other buildings in the surrounding area.

(4) *Garages:* A minimum of one-half of the number of required parking spaces must be within attached garages or an underground parking facility.

(G) *Maintenance.* A property maintenance agreement must be arranged by the applicant and submitted to the City Attorney for review and comment. The agreement shall ensure the maintenance and upkeep of the structure and lots to meet minimum city standards. The agreement is to be filed with the Hennepin County Recorder's office as a deed restriction against the title of each unit lot.

(H) *Energy efficiency.* All buildings and sites are to be sited and developed in such a way to maximize the benefits of the site for solar heating and passive cooling, and provide other amenities aimed at promoting energy efficiency and sustainability. Each new building or development shall incorporate a minimum of three elements:

(1) Buildings are to be oriented on the site to optimize passive solar heating and cooling opportunities.

(2) Buildings are to be oriented so as to minimize wind loads on the structure.

(3) Windows are to be placed, and appropriately shaded, to maximize solar penetration during the winter months and minimize solar penetration during the summer months.

(4) Use of white membrane roofing material.

(5) Installation of a green roof occupying a minimum of 30% of the total roof area.

(6) Install solar panels in conformance to § 152.187 to provide at least 10% of the project's estimate electricity demand.

(7) A minimum of 50% of all exterior light fixture used within the development shall be powered by solar panel energy.

(8) All lighting shall use LED fixtures.

(9) Daylight sensors or times shall be installed and used on all exterior lighting.

(10) Electric vehicle stalls/plug-in's.

(11) Indoor bicycle parking.

(12) On-site recycling and organic waste disposal.

(13) Community garage space available to all residents.

(14) Other such sustainable elements and amenities as proposed by the applicant to meet desired objectives.

(I) *Unit mix.* In order to retain a balance of housing choice in all new multi-family residential developments a range of unit mix is required. Apartment and condominium buildings, not including age restricted, shall include a mix of unit types with no more than 40% of the units constructed as one-bedroom units and no more than 60% of any other bedroom type.

(J) *Site design.* The character of the site, in addition to the buildings, is an important element in creating an aesthetic pleasing residential community.

(1) Orient and consolidate structure to complement exiting, adjacent development to create a coordinated and visually attractive residential setting.

(2) Buildings with frontage on a primary street shall orient front facades parallel to the street.

(3) Buildings shall have a clearly defined primary pedestrian entrance at the street level.

(4) Wherever a surface parking lot for an apartment building, condominium or parking lot of four or more spaces faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge or a combination of these elements to a minimum height of three feet and a maximum of three and one-half feet.

(K) *Pedestrian environment.*

(1) Pedestrian connections to the surrounding neighborhood shall be provided as feasible.

(2) Sidewalks and trails shall be included that provides connections to all areas of the development including community facilities, as well as to public sidewalks, adjacent city park and/ or facilities and transit. Detailed site plans shall be provided that demonstrates these connections.

(L) *Crime prevention*. Building access and internal hallways shall be so designed that any one single point of building entry cannot provide full access to the floor in which the access is located or the entire building.

(M) *Community and recreational facilities.* On site amenities and recreational facilities shall be provided in all multi-family developments. Minimum amenities in all developments 50 units or greater shall include outdoor common landscape areas and indoor/outdoor facilities that meet the needs of the intended population including such things as a community/party room, theatre, indoor/outdoor recreation areas such as swimming pools, indoor fitness centers, tennis courts, play equipment, walking trails, community gardens, and basketball courts. Details as to the proposed community and recreational facilities shall be provided during site plan review.

(N) *Roadway and driveway design.* All private roadways in multi-family developments shall have a design speed of 25 miles per hour, and shall have a maximum grade of 7%. All private driveways for garages in townhouse developments shall have a maximum grade of 11%.

(O) *Common areas.* The following minimum requirements shall be observed governing common areas:

(1) *Ownership:* All common areas within a multi-family development (attached or detached) not dedicated to the public including, but not limited to, open space, driveways, private drives, parking areas, play areas, recreational facilities, etc., shall be owned in one of the following manners:

(a) Condominium ownership pursuant to M.S. 515A.1-106.

(b) Single-family, twin-home, townhome subdivision common areas shall be owned by the owners of each unit lot, with each owner of a unit having an equal and undivided interest in the common area.

(2) *Homeowners' association (HOA):* A homeowners' association shall be established for all townhome developments intended for individual ownership, subject to review and approval of the City Attorney. The HOA shall be responsible for all exterior building maintenance, approval of any exterior architectural modifications, landscaping, snow clearing and regular maintenance of private driveways and other areas owned in common.

(P) *Lighting.* New multi-family developments shall utilize decorative lighting for all required lighting areas.

(1) Decorative style lighting a maximum of 15 feet in height shall be used to illuminate all common areas.

(2) Decorative pedestrian scaled lighting shall be used for all trails and pathways.

(3) Shoe box style lighting shall only be permitted in parking areas of four or more vehicles.

(4) Wall-mounted lighting shall be used to illuminate entry points and highlight architectural features.

(5) All lighting shall use downcast or shielded light source fixtures.

(Q) *Signs.* Development signage shall be submitted with the initial city application and shall be considered as part of the site review process.

(Ord. 2013-1158, passed 7-15-13)

BUSINESS DISTRICT PERFORMANCE STANDARDS

ESTABLISHMENT OF BUSINESS DISTRICTS

§ 152.300 PURPOSE.

This subchapter of the chapter defines and establishes the commercial and industrial zoning districts within the city. The business districts as a whole are designed to balance the community need for employment opportunities, goods, services and tax base

diversification with their impact on neighboring uses. The following business zoning classifications, except PCDD and PUD, are hereby established within the City of Brooklyn Park.

(Ord. 2000-936)

§ 152.301 "B-1" OFFICE PARK DISTRICT.

(A) *Purpose*. The "B-1" Limited Business District is intended to provide a district primarily for office uses, with other accessory retail and service uses offered on site to serve the primary use or their employees.

(B) This district may be applied only to those properties designated for office, commercial, or mixed use development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.302 "B-2" NEIGHBORHOOD RETAIL BUSINESS DISTRICT.

(A) *Purpose*. The "B-2" Neighborhood Retail Business District is intended to provide a district which encourages compact centers for retail sales and services that serve the adjacent neighborhoods and to preserve and protect the general character of the adjacent areas. The city has determined that certain uses may present a greater impact on adjacent land uses than others due to characteristics unique to the function and design of the particular use.

(B) This district may be applied only to those properties designated for commercial or mixed use development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.303 "B-3" GENERAL BUSINESS DISTRICT.

(A) *Purpose*. The "B-3" General Business District is intended to provide centralized areas for businesses that have a community or regional customer base in that they generally draw customers from farther away than the adjacent neighborhoods.

(B) This district may be applied only to those properties designated for commercial or mixed use development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.304 "B-4" VEHICLE SALES AND SHOWROOM DISTRICT.

(A) *Purpose*. The "B-4" Vehicle Sales and Showroom District is intended to provide areas for vehicle sales businesses that draw from a regional customer base and has outdoor storage, display and/or sales of vehicles and/or recreational equipment.

(B) This district may be applied only to those properties designated for commercial development on the Comprehensive Land Use Map.

(Ord. 2000-936)

§ 152.305 "BP" BUSINESS PARK DISTRICT.

(A) *Purpose*. The "BP" Business Park District is designed to provide areas in which to locate businesses that enhance the city's tax base, have few customers coming to the site, but may have a large employee base, involve manufacturing, warehousing, office uses, and other accessory retail and service uses offered on site to service the primary use or their employees. The properties and buildings in this district must be designed to promote a campus-like setting that exhibits a landscape theme and high quality exterior building materials.

(B) This district may be applied only to those properties designated for office, commercial, industrial, or mixed use development on the Comprehensive Land Use Map.

(Ord. 2000-936; Am. Ord. 2014-1180, passed 9-21-14)

§ 152.306 "I" GENERAL INDUSTRIAL DISTRICT.

(A) *Purpose*. The "I" General Industrial District is designed to provide a district for warehousing and industrial uses that may present negative off-site impacts to adjacent properties and are potentially environmentally sensitive due to the characteristics of the use of the property, and/or have an extensive amount of outdoor storage requirements.

(B) This district may be applied only to those areas designated for industrial development on the Comprehensive Land Use Map.

(Ord. 2000-936)

REQUIRED LOT AREA AND DIMENSIONAL REQUIREMENTS FOR BUSINESS DISTRICTS

§ 152.320 PURPOSE.

The purpose of this subchapter is to establish minimum area and dimensional requirements for the business zoning districts to allow conformance with the policies of the Comprehensive Plan, promote open space around structures, provide green area and space for the enjoyment of all, and protect public easements.

(Ord. 2000-936)

§ 152.321 STANDARDS.

The following standards are established for the business zoning districts (B-1, B-2, B-3, B-4, BP, and I) and must apply to all properties within these districts:

(A) No required lot area, yard or open space allocated to a structure or lot in compliance with this chapter may be used to satisfy the minimum lot area, yard, or open space requirement for any other structure or lot, unless modified by this chapter.

(B) The maximum amount of building footprint and impervious surface on any one parcel within the business districts may adhere to the following restrictions:

Figure 152.321.01 Maximum Allowable Building Footprint and Impervious Surface

Zoning District	Maximum Building Footprint	Minimum Building Footprint	Maximum Impervious Surface on all Sites Receiving Site Plan Approval Prior to (March 5, 2012)	Maximum Impervious Surface on all Sites Receiving Site Plan Approval after (March 5, 2012)
B-1	35%	NA	70%	70%
B-2	35%	NA	75%	70%
B-3	35%	NA	80%	75%
B-4	35%	10%	80%	75%
BP	FAR 1:1	NA	85%	70%
I	FAR 1:1	NA	85%	75%

(C) The minimum lot area and width for each parcel within a business district must adhere to the following restrictions:

Figure 152.321.02 Required Lot Area and Width		
Zoning District	Minimum Lot Area in Square Feet	Lot Width in Lineal Feet
B-1	15,000	100
B-2	25,000	125
B-3	25,000	150
B-4	87,120	150
BP	25,000	100
I	40,000	150
B-1, B-2, and B-3 for Care centers and convalescent homes	600 square feet of lot area for each person cared for (design capacity)	See District Requirements Above

(D) All uses must occur within the principal structure(s) on the property.

(Ord. 2000-936; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.322 SETBACKS.

Principal buildings and accessory structures must comply with the following setback restrictions from property lines within the business districts:

Figure 152.322.03 Minimum Required Setbacks						
	B-1	B-2	B-3	B-4	BP	I
From public right-of-way	50	50	50	50	50	50
Side - From interior property line (Except as noted below)	10	10	15	15	15	15
Rear - From interior property line	30	30	30	30	30	30
Side or Rear - From residential district property line	50	75	75	75	110	110

(A) Interior side building setbacks for the BP and I district are the height of the building or the distance shown in the above table, whichever is greater.

(B) A 35 foot bermed and landscaped area must be included within the required setback area from residential district property

lines.

(C) The interior property line may be reduced to zero feet where a property has a railroad trackage abutting the interior side of the lot and the existing or planned principal structure on the property has railroad loading docks.

(D) The following features may extend into the required setback from a public right-of-way:

(1) 3 feet - Pilasters, lintels, stoops, ornamental features, cornices, eaves, bays, gutters, and similar projections

(2) 10 feet - Canopies, awnings, and other similar features as determined by the City Manager.

(3) 25 feet - outdoor or patio food service (restaurants only). These areas may be covered with a canopy or awning, but may not be enclosed.

(E) *Zero lot line development standards.* A business may request to be a zero lot line development if all of the following conditions are met:

(1) Each lot of record comprising a zoning lot must meet the minimum lot area and width requirements of the district.

(2) The landscaping and screening provision of this chapter must apply to each lot.

(3) Individual land uses within each zoning lot must each adhere to the applicable minimum parking requirements of this chapter.

(4) Cross access easements must be required to accommodate shared parking arrangements and access drives, and evidence of the maintenance of all shared facilities may be provided to the city and may be recorded with the resolution approving the Conditional Use Permit or Site Plan Review (whichever applies according to §§ 152.030 through 152.039).

(5) Signed agreements for the maintenance of shared signs may be provided to the city and may be recorded with the resolution approving the Conditional Use Permit or Site Plan Review (whichever applies according to §§ 152.030 through 152.039). For the purpose of determining the use, placement and number of signs for a zoning lot and the individual uses, the entire zero lot development may be considered a "business property" as referenced in the city's Sign Ordinance.

(Ord. 2000-936)

§ 152.323 CLEAR VIEW TRIANGLES.

(A) *Intersections.* No building, structure, fence or planting may be erected inside a 50 foot clear view triangle between the rights-of-way of intersecting streets. This restriction may not apply to trees trimmed to a distance of at least seven feet above the curb line or to shrubs which do not exceed more than three feet in height and do not obstruct visibility across the above described triangle.

(B) *Access drives.* No building, structure fence or planting may be erected inside a 30 foot clear view triangle between a street right-of-way and an access driveway. This restriction may not apply to standard mailboxes, trees trimmed to a distance of at least three feet in height at maturity and do not obstruct visibility across the above described triangle.

(Ord. 2000-936)

§ 152.324 BULK RESTRICTIONS.

(A) *Floor area ratio.* The maximum floor area of commercial buildings must not exceed a one- to-one ratio unless otherwise approved in a Conditional Use Permit.

(B) *Minimum height limitations.* The minimum height for a principal building on any property must be no less than 15 feet in height as measured from the highest adjacent grade to the top of the roof.

(Ord. 2000-936)

§ 152.325 HEIGHT LIMITATIONS.

(A) Unless otherwise approved through a site plan approval all non-residential uses on parcels adjacent to residential uses in residential districts must be constructed at a height no greater than 35 feet or the height of any residential use, whichever is greater.

Consideration to approve greater height may include, but not limited to, existing conditions, increased setbacks, and buffering.

(B) *Exemptions*. Height limitations do not apply to radio and T.V. antennas, belfries, steeples, cooling towers, and water towers.

(Ord. 2000-936; Am. Ord. 2012-1133, passed 3-5-12)

PERMITTED, CONDITIONAL, AND TEMPORARY USES IN BUSINESS DISTRICTS

§ 152.340 PURPOSE.

The following section establishes a listing of the permitted, conditional, and temporary uses for the business zoning districts (B-1, B-2, B-3, B-4, BP, and I). The uses have been assigned to the appropriate business districts to allow reasonable use of properties in a manner that is compatible with the purpose of each business zoning district and the overall purpose of this zoning code and the code of ordinances.

(Ord. 2000-936)

§ 152.341 PROPOSED DEVELOPMENTS SUBJECT TO SITE PLAN REVIEW REQUIREMENTS.

All proposed developments are subject to the Site Plan Review requirements found in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.342 PERMITTED AND CONDITIONAL USES.

Permitted and conditional uses for each business district are defined in the following table:

Figure 152.342.01 Uses in Business Districts

"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted						
Principal Use	*B-1*	*B-2*	*B-3*	*B-4*	*BP*	*I*
Assembly, banquet, convention halls, or conference centers	NP	C	C	C	NP	NP
Automobile rental containing more than six cars on site	NP	C	C	C	NP	NP
Body art in compliance with M.S. Chapter 146B and Chapter 123 of this code	NP	P	P	NP	NP	NP
Bus or truck storage or service shops, including fuel stations	NP	NP	NP	NP	NP	C
Business, trade, or non-academic colleges operated for profit	P	P	P	P	P	NP
Care centers, convalescent homes, hospitals, veterinary clinics, and assisted living facilities	C	C	C	C	NP	NP
Clubs	NP	C	C	C	NP	NP
Commercial indoor recreational facilities under 2,450 square feet	NP	P	P	P	P	P

Commercial indoor recreational facilities over 2,450 square feet	NP	C	C	C	C	C
Commercial kennels in accordance with § 92.15	NP	P	P	P	P	P
Commercial outdoor recreational facilities	NP	C	C	C	NP	NP
Concrete or asphalt mixing plants, concrete block fabrication, or builders' or contractors' yards, brick yards, and accessory sale of dirt, sand, gravel, rock, concrete blocks, bricks, etc.	NP	NP	NP	NP	NP	C
Daycare facilities, licensed	P	P	P	P	P	P
Distribution center	NP	NP	NP	NP	P	P
Fabrication or assembly of heavy equipment or vehicles	NP	NP	NP	NP	NP	C
Funeral homes	P	P	P	NP	NP	NP
Helicopter pad/landing site	NP	NP	NP	NP	C	NP
Hotels and motels	NP	C	C	C	C	NP
Manufacturing, assembly, processing, fabricating, brewing, distilling, and accessory sale of the product produced on site, except those uses further restricted in this ordinance.	NP	NP	NP	NP	P	P
Multiple principal structures on a single lot	C	C	C	C	C	C
Multiple family dwelling and cluster housing in compliance with § 152.344	NP	C	C	NP	NP	NP
Offices, banks or clinics	P	P	P	P	P	P
Public and quasi-public facilities	C	C	C	C	NP	C
Public schools, including charter schools in compliance with § 152.182	C	NP	NP	NP	NP	NP
Religious institutions, in compliance with §§ 152.180 through 152.182	P	P	P	P	NP	NP
Restaurants, brewpub	NP	C	C	C	C	C
Restaurants, Class I, in compliance with § 152.033	NP	P	P	P	P	P
Restaurants, Class II	NP	C	C	C	C	C
Sales and Service						
All structures for retail or service businesses with 25,000 square feet or less, excluding those mentioned elsewhere in this section	NP	P	P	P	C	C

All structures for retail or service businesses with between 25,000 and 50,000 square feet, excluding those mentioned elsewhere in this section	NP	C	P	P	NP	NP
All structures for retail or service businesses with 50,000 square feet or more, excluding those mentioned elsewhere in this section	NP	C	C	C	NP	NP
Auto oriented repair services	NP	NP	C	C	C	C
Carwashes	NP	NP	C	C	C	NP
Currency exchanges and pawnshops in compliance with § 152.344	NP	NP	C	NP	NP	NP
Fuel stations	NP	C	C	C	C	C
Heavy equipment, machinery and farm vehicle sales, contractors yards, bulk firewood sales, and gravel and rock sales	NP	NP	NP	NP	NP	P
Indoor sales of automobiles, trucks and recreational vehicles and the like in compliance with § 152.344	NP	NP	NP	C	C	C
Sexually oriented businesses in compliance with § 152.343	NP	NP	P	NP	NP	NP
Showrooms and sales of automobiles, trucks and recreational vehicles and equipment and the like in compliance with § 152.344	NP	NP	NP	C	NP	NP
Wholesale, broker and auction dealer of automobiles, trucks and recreational vehicles and the like in compliance with § 152.343	P	P	P	P	P	P
Self-service storage facility	NP	NP	C	C	C	C
Social clubs	NP	NP	C	NP	NP	NP
Stone, marble or granite grinding and cutting	NP	NP	NP	NP	NP	C
Theaters, excluding drive-ins	NP	C	C	C	NP	NP
Transient sales, in compliance with § 152.344	NP	NP	C	NP	NP	NP
Truck or motor freight terminal	NP	NP	NP	NP	NP	C
Vehicle impound yards	NP	NP	NP	NP	NP	C
Warehousing	NP	NP	NP	NP	P	P

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2002-978, passed 8-12-02; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-1000, passed 6-16-03; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2004-018, passed 8-23-04; Am. Ord. 2004-1024, passed 12-13-04; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2006-1058, passed 6-5-06; Am. Ord. 2007-1070, passed 3-26- 07; Am. Ord. 2010-1122, passed 12-20-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1138, passed 4-16-12; Am. Ord. 2012-1139, passed 4-16-12; Am. Ord. 2012-1149, passed 9-4-12; Am. Ord. 2014-1169, passed 5-5-14; Am. Ord. 2014-1180, passed 9-2-14; Am. Ord. 2014-1182, passed 10-6-14; Am. Ord. 2015-1198, passed 10-12-15; Am. Ord. 2016-2011, passed 11-14-16)

§ 152.343 ADDITIONAL REGULATIONS FOR PERMITTED USES.

Some permitted uses are further regulated to promote the health, safety and general welfare. If these regulations are met, the use is considered permitted subject to the Site Plan Review requirements in §§ 152.030 through 152.039.

(A) *Sexually oriented businesses.*

(1) All entrances to the business, with the exception of emergency fire exits which are not usable by patrons, must be visible from the public right-of-way. When such businesses are located within an enclosed commercial complex, all patron entrances may open onto the common concourse.

(2) Layout of the publicly accessible areas must be designed so that the management of the establishment and any law enforcement personnel inside the business can observe all patrons while they have access to any merchandise offered for sale.

(3) The site must be at least 750 feet from any school; daycare/preschool; library; park, playground, or other public or private recreational facilities in any zone; and another adult entertainment/adult service business.

(4) No establishment may be open to the public from the hours of 11:00 p.m. and 8:00 a.m.

(5) Signs visible to the public comply with the city's sign ordinance and may not contain graphic descriptions or representations of the adult theme of the operation.

(6) All establishments may apply for and obtain a license from the City of Brooklyn Park before a building permit may be issued.

(B) *Wholesale, broker, and auction dealer of automobiles.*

(1) Must meet minimum state guidelines for dealer license under M. S., Chapters 168, 168A, and 325F, pertaining to dealer licensing and motor vehicle titles and registration, as well as Minnesota Rules, sections 7400.0100 through 7400.6000.

(2) No storage and display of vehicles is allowed.

(Ord. 2000-936; Am. Ord. 2016-2011, passed 11-14-16)

§ 152.344 ADDITIONAL REGULATIONS FOR CONDITIONAL USES.

No permit may be issued for construction for a building, structure or land use that is intended to be used for conditional uses unless a Conditional Use Permit has been granted by the City Council in accordance with §§ 152.030 through 152.039. Some businesses may be required to submit additional information above and beyond that shown in §§ 152.030 through 152.039, those conditions are defined in this section.

(A) *Currency exchanges.*

(1) All entrances to the business, with the exception of emergency fire exits which are not usable by patrons, must be visible from the public right-of-way. When such businesses are located within an enclosed commercial complex, all patron entrances must open onto the common concourse.

(2) Layout of the publicly accessible areas must be designed so that the management of the establishment and any law enforcement personnel inside the business can observe all patrons while they have access to any merchandise offered for sale.

(3) The site must be at least 500 feet from the property line of a pawnshop, an adult entertainment/adult service, or any residential district and one-half mile from a site containing another currency exchange business. The site plan must show the location of the proposed currency exchange business and any other currency exchange business if any are located within one mile of the proposed site.

(4) All establishments may apply for and obtain a license from the State of Minnesota, before a building permit may be issued.

(B) *Pawnshops*.

(1) All entrances to the business, with the exception of emergency fire exits which are not usable by patrons, must be visible from the public right-of-way. When such businesses are located within an enclosed commercial complex, all patron entrances must open onto the common concourse.

(2) Layout of the publicly accessible areas must be designed so that the management of the establishment and any law enforcement personnel inside the business can observe all patrons while they have access to any merchandise offered for sale.

(3) The site must be at least 500 feet from the property line of a site containing a religious institution, school, day-care/preschool, another pawnshop, an adult entertainment/adult service business, a currency exchange or any residential district.

(4) All establishments must apply for and obtain a license from the City of Brooklyn Park, before a building permit may be issued.

(C) *Automobile sales and showrooms*. The CUP application must be accompanied by plans showing the following:

(1) *Lot requirements*.

(a) *Contiguous property*. Motor vehicle sales must be on contiguous lots not separated by a public street, alley or other use.

(b) *Access driveways*.

1. *Distance from intersections*. The distance of the driveway from any street intersection must be not less than 50 feet, unless, in the opinion of the City Manager, present or future traffic conditions warrant greater distances, such greater distances may be required.

2. *Driveway angles*. The minimum driveway angle to street must be 60 degrees.

3. *Separation between driveways*. The minimum distance between a driveway and an adjacent property must be five feet at the curb cut.

(2) *Site design*.

(a) *Impervious surface*. All areas on which motor vehicles are stored or displayed must be paved with concrete or a bituminous surface. No display, sale or storage of automobiles or other vehicles are permitted on landscaped areas.

(b) *Parking*. In addition to the requirements of §§ 152.140 through 152.146, the parking areas may be:

1. Shown and designated on the site plan,

2. Kept free of display vehicles, on a continual basis, and,

3. Appropriately designated with signs for use by customers and employees.

(c) *Damaged and inoperable vehicles*. All damaged and inoperable vehicles may be kept in an enclosed building or area completely screened from public streets and adjacent property.

(d) *Display vehicle parking*.

1. Each display vehicle parking space must meet the required size of a parking space as defined in §§ 152.140 through 152.146, and must be striped accordingly.

2. No display vehicles may be parked on grass, curb islands, sidewalks, other landscaped areas or in the required customer parking.

3. No vehicles may be displayed on elevated platforms, jacks, or berms. However, parking will be allowed in approved/designated concrete display areas with a maximum height of six inches above the parking lot surface.

4. No rows of display vehicles may be longer than 180 feet. Landscaped areas with overstory deciduous trees are required to separate rows of display vehicles. Required parking lot open space areas may be larger than typically required in the district to accomplish this objective.

5. No display parking of vehicles may be permitted in the drive aisles.

(e) No outside storage of scrap metal, auto parts, or the like is allowed.

(f) No vehicles may be unloaded from transport trucks in the public rights-of-way.

(g) *Signs*. In addition to the regulations found elsewhere in the City Code, the following may apply:

1. No signs may be permitted in or on any display vehicles except the following and no signs may be readable from a public right-of-way or adjacent property:

a. Disclosure statements required by state and/or federal law.

b. Identification of the displayed vehicles by make, model, year and price.

2. Window signs must be limited to 25% of the window area, up to a maximum of 200 square feet.

(h) All outdoor illumination on sales lots may be provided with lenses, reflectors, or shades, which will concentrate the light upon the premises so as to prevent glare or direct rays of light from being visible upon any adjacent public right-of-way or any private property occupied for residential purposes. Lighting from any source on the property may not exceed three foot candles as measured from the centerline of any adjacent street nor three foot candles at any property line which is not also a public right-of-way line.

(3) *Building requirements.*

(a) The City Council may review and approve all facade materials to ensure quality architectural design.

(b) The orientation of the buildings must be toward the public rights-of-way and must be setback a distance no greater than 200 feet.

(D) *Passenger vehicle fuel and/or service stations.*

(1) All applications for Conditional Use Permits must be accompanied by the following:

(a) An evaluation of subsurface conditions, soil resistivity and groundwater table conditions prepared by a professional engineer, licensed by the State of Minnesota.

(b) Information that demonstrates compliance with the installation requirements of §§ 93.30 through 93.41 of the City Code and the requirements of the Minnesota Pollution Control Agency.

(2) *Minimum frontage and lot area*. The minimum frontage on any street must be 150 feet for a station with four pump/meter stations or less; and stations with additional pump/meter stations may provide additional frontage and area to provide equivalent and sufficient space for servicing vehicles, for off-street parking, for safe vehicular approaches into the station, and for visibility for pedestrians and drivers.

(3) *Building setbacks (from property lines).*

(a) From public right-of-way - 60 feet.

(b) Interior side or rear - 30 feet.

(c) Residential - see district requirements.

(4) Canopies or other weather protection structure (free standing or projecting from a building).

(a) Setbacks (from property lines):

1. Public right-of-way - 40 feet.

2. Interior side or rear - 30 feet.

3. Residential - 50 feet.

(b) Maximum height. Twenty-five feet.

(c) Lighting.

1. Neon banding, whether around the exterior of the canopy or behind panels are not permitted.

2. With the exception of permitted signs, no lighting or the face of the canopy is allowed. This includes a prohibition on

backlit panels on the face of the canopy.

3. All lighting installed must be recessed into the canopy and lights must be directed downward and away from adjacent properties in compliance with §§ 152.110 through 152.114.

(d) *Signs*. All signs must conform to requirements of Chapter 150 (Sign Chapter).

(5) *Pump/meter islands.*

(a) Setbacks.

1. From public right-of-way - 50 feet.

2. Interior side or rear - 40 feet.

3. Residential - 100 feet.

(b) Vehicle stacking.

1. Vehicle stacking for gas pump dispensing must be provided for at least one car beyond the pump island in each direction in which access can be gained to the pump. The required vehicle stacking area for gas dispensing may not interfere with the internal circulation drive aisles or designated parking aisles.

2. Vehicle stacking for gas pump dispensing may not be permitted in any public right-of-way, private access easement, or within the required parking setback area.

(6) *Landscaping*.

(a) *Sites with areas adjacent to residential uses.* The setback from residential district property lines must include a 35 foot bermed and landscaped area.

(b) *From public rights-of-way.* The setback from public rights-of-way must include a 15 foot bermed and landscaped area.

(c) *From interior side and rear property lines.* The setback from public rights-of-way must include a five foot landscaped area.

(7) *Paving required.* All paved areas must be surfaced with concrete or bituminous surfacing to control dust and provide adequate drainage, designed to meet the requirements of a minimum seven ton axle load.

(8) *Access driveways.* The distance of the driveway from any street intersection must be not less than 100 feet, unless, in the opinion of the City Manager, present or future traffic conditions warrant greater distances then such greater distances may be required.

(9) If the business is located in a shopping center or other integrated development, it must be in harmony with the rest of the center or development.

(10) Layout of the publicly accessible areas on the site may be designed so that the employees of the establishment and any law enforcement personnel inside the business can observe all patrons while they have access to any merchandise offered for sale in the building or are at fuel pumping areas.

(E) *Transient sales.* All applications for Conditional Use Permits must be in compliance with the following.

(1) The location for the sale must have a minimum 150 foot setback from any intersection.

(2) The location for the sale must meet the minimum setbacks for a principal building on the property, and may not be permitted on the following: public rights-of-way, landscaped areas, fire lanes, or drive aisles.

(3) The location for the sale may not occupy more than 100 square feet.

(4) The location for the sale may not occupy the required minimum parking spaces for the principal use(s) on the site.

(5) The location for the sale must be large enough to provide adequate parking.

(6) Use of the property for transient sales may not exceed ten days within a maximum period of six months.

(7) Transient sales may not take place between the hours of 6:00 p.m. and 10:00 a.m.

(8) No overnight storage of transient merchant equipment or merchandise may be allowed. Transient merchant equipment may be permitted on the premises only between the hours of 8:00 a.m. and 8:00 p.m. on a day transient sales are to take place.

(9) Signs must be in conformance with Chapter 150 of the City Code and may not include horns, bells, loudspeakers, balloons, pennants, or other attention getting devices.

(10) A license may be issued pursuant to the City Code, and may be conspicuously posted in the transient merchant's location.

(11) Written permission to occupy the property must be filed with the application for Conditional Use Permit.

(F) *Social clubs.*

(1) The hours of operation available to customers are limited to 10:00 am to midnight daily. Minor patrons must follow curfew ordinances.

(2) The business owner must provide an up-to-date security plan that is acceptable to the Police Chief. The security plan must be reviewed annually.

(3) Commercial kitchen facilities must be licensed and maintained on-site for preparation and service of food and non-alcoholic beverages available to patrons.

(4) Disorderly conduct, as listed in Section 112.003(C), shall be grounds for revocation.

(5) The establishment may impose a cover charge.

(6) The establishment may have live entertainment (including, but not limited to bands, comedians, and disc jockeys)

(7) The establishment is not eligible for alcoholic beverages under any license type

(G) Residential/multifamily/cluster housing in a B-2, Neighborhood Retail District. All applications for Conditional Use Permits must be in compliance with the following:

(1) It is part of a commercial development permitted within the district.

(2) The building design and placement provide a desirable residential environment.

(3) Access to open space, plazas, and pedestrian ways is provided.

(4) The housing is located above the ground floor.

(5) The minimum spacing between buildings is at least equal to the average heights of the buildings except where dwellings share common walls.

(6) The total number of units provided on an individual parcel does not exceed eight units.

(H) Residential/multifamily/cluster housing in a B-3, General Business District. All applications for Conditional Use Permits must be in compliance with the following:

(1) It is part of a larger commercial development permitted within the district.

(2) The building design and placement provide a desirable residential environment.

(3) Access to off-site parks, open space, plazas and pedestrianways is provided.

(4) The housing represents a maximum of 30% of the ground floor area of total development. 100% of floor area above the ground floor may be developed as housing.

(5) A minimum of 12% of the site area is developed outdoor recreation area.

(6) The minimum spacing between buildings is at least equal to the average heights of the buildings except where dwellings share common walls.

(7) All dwelling units are at or above the grade of all land within a distance of 25 feet from all faces of the buildings.

(8) Buildings are located a minimum of 15 feet from the back of the curbline of internal private roadways or parking lots.

(9) Housing density does not exceed 25 units per acre.

(10) The use is in conformance with the comprehensive plan.

(I) Commercial indoor recreational facilities over 2,450 square feet in the General Industrial District must meet the following conditions.

(1) Site design.

(a) In addition to the requirements of §§ 152.140 through 152.146, parking areas must be:

1. Shown and designated on the site plan;

2. Appropriately designated with signs for use by customers and employees;

3. Large enough to provide adequate parking for all uses on the site;

4. Separated by distance, location, and/or special landscaping provisions between cars and trucks.

(2) If located in a multi-tenant building or development, the use must be compatible with the rest of the building or development.

(3) Signs must be in conformance with Chapter 150 of the City Code.

(4) Adequate lighting for night time pedestrian use must be provided.

(5) The building design and site plan must provide a safe and desirable pedestrian environment.

(6) The use is in conformance with the Comprehensive Plan.

(J) Indoor Sales of automobiles, trucks, and recreational vehicles and the like.

(1) Must meet minimum state guidelines for dealer license under M.S., Chapters 168, 168A, and 325F, pertaining to dealer licensing and motor vehicle titles and registration, as well as Minnesota Rule, sections 7400.0100 through 7400.6000.

(2) Storage and display of vehicles must be completely enclosed inside a building if vehicles are located on site.

(3) No vehicles may be unloaded from transport trucks in the public rights-of-way.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2002-977, passed 6-24-02; Am. Ord. 2006-1058, passed 6-5-06; Am. Ord. 2010-1122, passed 12-20-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1139, passed 4-16-12; Am. Ord. 2015-1198, passed 10-12-15; Am. Ord. 2016-2011, passed 11-14-16)

§ 152.345 TEMPORARY USES AND EVENTS.

This section allows for certain temporary events and uses that are accessory to the principle use in a business district and typically occur for short durations on an infrequent basis. All events or uses may be conducted by the proprietor of the business conducted within the principal structure on the property.

(A) *Administrative permit required.* Permits will not be issued until the issues discussed below have been resolved and the event or use is demonstrated to be in compliance with §§ 152.030 through 152.039 and all applicable City Codes to the satisfaction of the City Manager.

(B) *Temporary events.* Permits may be required for any event with temporary structures or tents, preparation and service of food or beverages for sale, or traffic or parking congestion beyond that expected without the event. The events include outdoor religious events, tent sales, employment fairs, and other similar outdoor uses and events as determined by the City Manager. Construction activities related to the construction, demolition, or rehabilitation of a dwelling, building, or structure are not regulated by this section.

(1) Events may be limited to ten consecutive days per calendar year and all equipment, structures, signs, or other evidence of the use may be removed from the property one day after termination of the event.

(2) Disturbed turfed areas must be restored to their pre-event condition within three weeks.

(3) Sanitary facilities must be provided as required by the City Manager.

(4) Any impairment to traffic flow must be documented and mitigated to the satisfaction of the City Manager.

(C) *Temporary uses.* Temporary uses may include environmental monitoring of a use and structures for hiding the monitoring equipment and other similar outdoor uses as determined by the City Manager. No administrative approval of temporary uses may be given for structures primarily for storage associated with the principal use.

(1) *Duration of permit.* The permit must include a specific date, not to exceed one year, during which time the use may exist. By the specified date, the use and any associated structure(s) must be removed from the property and the site returned to a condition that meets or exceeds the pre-use condition.

(2) *Financial guarantees.* Financial guarantees or a cash escrow may be required at the time of permit application to guarantee the restoration of the site to its pre-use condition.

(Ord. 2000-936)

BUSINESS DISTRICT ACCESSORY USES AND STRUCTURES

§ 152.360 PURPOSE.

This section provides standards that accessory uses and structures in business districts are required to meet. These standards allow the property owner to use the property in ways that are normally associated with the principal business use of the property and allow the city appropriate means of implementing the Comprehensive Plan's goals, objectives and policies for business neighborhoods. The accessory uses listed in § 152.361 are permitted/conditional in the individual commercial zoning districts provided that:

(A) Such uses are subordinate and incidental to the principal use of the property.

(B) No accessory use is permitted that changes the character, rating or appearance of the property or any structures on the property.

(C) No accessory use or structure other than a fence or a temporary construction office for a project to be built on the property is permitted in any business district without a principal use occupying the property.

(D) No exterior storage or display of equipment, materials or products is allowed, except as permitted by this section and Chapter 150 of the City Code.

(Ord. 2000-936)

§ 152.361 ACCESSORY USES.

The following table provides a listing of accessory uses permitted in each commercial district. Other similar uses may be reviewed by the City Manager. These uses may be further regulated in § 152.362:

Figure 152.361.01 Accessory Uses in Business Districts

"P" = Permitted Use "C" = Conditional Use "NP" = Not Permitted

Accessory Use	*B-1*	*B-2*	*B-3*	*B-4*	*BP*	*I*
Antennas, satellite dishes and the like as regulated by §§ 152.090 through 152.096	P	P	P	P	P	P
Beekeeping	P	P	P	P	P	P
Buildings temporarily located for purposes of construction on the premises for a period not to extend beyond the issuance of a certificate of occupancy or the end of construction	P	P	P	P	P	P
Car wash (automatic) when accessory to a						

fuel station in compliance with § 152.362	NP	C	C	C	C	NP
Cocktail room	NP	NP	NP	NP	NP	NP
Community garden as regulated by § 152.184	P	P	P	P	P	P
Crematories/Crematoriums when accessory to a funeral home subject to the state license and regulation process	P	NP	NP	NP	NP	NP
Drive-through windows	C	C	C	C	C	C
Farmers' market in compliance with § 152.362	C	C	C	C	C	C
Gas tanks (above ground) for propane, liquid nitrogen, etc. (excludes motor vehicle fuel) when fully screened or located out of public view	NP	P	P	P	P	P
Live entertainment in conjunction with a Class I, II, or brewpub restaurant	NP	P	P	P	P	P
Live entertainment in conjunction with a taproom or cocktail room	NP	NP	NP	NP	P	P
Live entertainment in conjunction with a Class I, II, or brewpub restaurant where a cover charge is required	NP	NP	C	C	C	C
Live entertainment in conjunction with a taproom or cocktail room where a cover charge is required	NP	NP	NP	NP	C	C
Loading docks in compliance with §§ 152.140 through 152.148	P	P	P	P	P	P
Mobile food units in compliance with § 152.362	P	P	P	P	P	P
Outdoor pet runs in conjunction with a commercial kennel	NP	NP	NP	NP	C	C
Outdoor sales and display in compliance with § 152.362(D) and (H)	NP	NP	C	C	NP	NP
Outdoor storage in compliance with § 152.362(I)	NP	NP	C	C	C	C
Overnight recreational vehicle/recreational equipment parking or camping	NP	NP	NP	NP	NP	NP
Repair of vehicles when accessory to a vehicle sales business in conformance with §§ 152.340 through 152.345	NP	NP	NP	C	NP	NP
Restaurants, Class I, in compliance with §§	P	P	P	P	P	P

152.033 and 152.362(C)						
Restaurants, Class II, in compliance with § 152.362(C)	NP	C	C	C	C	C
Retail and service businesses as regulated by § 152.362	P	NP	NP	NP	P	P
Seasonal (temporary) greenhouses and garden centers in compliance with § 152.362(B)	NP	C	C	C	NP	NP
Seasonal sales (temporary) of Christmas trees	NP	P	P	NP	NP	NP
Seasonal sales (temporary) of fireworks between June 15 and July 5	NP	P	P	NP	NP	NP
Signs as regulated by Chapter 150 of the City Code	P	P	P	P	P	P
Solar energy system in conformance with § 152.187	P	P	P	P	P	P
Staging area in compliance with §§ 152.140 through 152.148	P	P	P	P	P	P
Storage shed when accessory to daycare facilities or religious institutions in compliance with § 152.362	P	P	P	P	P	P
Structures designed to house environmental monitoring equipment	C	C	C	C	C	C
Taproom	NP	NP	NP	NP	C	C
Telecommunication towers as regulated in §§ 152.090 through 152.096	C	C	C	C	C	C
Transient sales, in compliance with § 152.344	NP	NP	C	NP	NP	NP
Exterior, food and beverage vending machines, ice machines, and propane tank exchanges in compliance with § 152.362	NP	P	P	P	P	P
Warehousing, incidental repair, or processing in compliance with § 152.362	P	P	P	P	P	P
Waste and recycling storage as regulated in §§ 98.01 through 98.16 of the City Code and §§ 152.290 through 152.293	P	P	P	P	P	P
Wind energy conversion system in conformance with § 152.187	P	P	P	P	P	P

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2002-977, passed 6-24-02; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2003-1004, passed 10-6-03; Am. Ord. 2003-1008, passed 11-3-03; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2007-1081, passed 11-26-07; Am. Ord. 2010-1118, passed 10-4-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1139, passed 4-16-12; Am. Ord. 2012-1143, passed 5-21-12; Am. Ord. 2012-1149, passed 9-4- 12; Am. Ord. 2013-

1153, passed 1-28-13; Am. Ord. 2014-1177, passed 7-7-14; Am. Ord. 2014-1182, passed 10-6-14; Am. Ord. 2015-1191, passed 5-18-15)

§ 152.362 ADDITIONAL STANDARDS FOR ACCESSORY USES.

Certain accessory uses have characteristics that require additional regulation by the city to assure compatibility with other business properties and neighborhoods. The following accessory uses must comply with the following additional performance standards:

(A) *Car washes in the B-2 district.*

(1) The use must be accessory to a vehicle fuel station.

(2) The lot must be a minimum of two acres.

(3) The building/structure housing the car wash must be no closer than 100 feet to the residential district boundary.

(4) Additional regulations may be required through the Conditional Use Permit process to mitigate noise and/or other potential nuisances.

(B) *Seasonal greenhouses or garden centers.* The Conditional Use Permit may reflect the location, extent, content and allowable time period, the location, appearance and size of any outdoor seasonal greenhouse or garden center. The Conditional Use Permit must also comply with the following:

(1) The area(s) designated may not be located in the required parking areas, block sidewalks, or interfere with public safety.

(2) The area(s) designated may not be permitted in the required setback from residential districts or public rights-of-way.

(3) The proprietor of the business must keep a copy of the Conditional Use Permit on the premises and demonstrate compliance with the permit upon inspection.

(4) Conditional Use Permits may be revoked by the City Council if the activity is not used on an annual basis or if violations to any of the above regulations have been documented and were not corrected in a timely manner as determined by the City Manager.

(C) *Restaurants and retail or service businesses as accessory uses.*

(1) May be located within the principal building or as a single tenant in a multi-tenant building.

(2) The area of the building for restaurants or retail or service businesses are restricted to one-half of the total floor area of the ground level floor of a multistory building, but may not be restricted to any location in the building, or 10% of the floor area of a single story building.

(D) *Exterior food and beverage machines, ice machines, and propane tank exchanges.*

(1) Must be in conjunction with approved fuel or vehicle service businesses and convenience or full-service grocery or variety goods store.

(2) Must be adjacent to and project no further than five feet from the primary building.

(3) Where sidewalks are present, a minimum access width of four feet must be provided and may not be blocked by the vending machines or containers.

(4) In addition to subsections (1) through (3) above, propane tank exchanges must be located within a metal cabinet painted to blend into the building. The cabinet, not to exceed 52 cubic feet, must receive a permit from the Fire Chief.

(5) In addition to subsections (1) through (4) above, propane tank exchanges in the Planned Unit Development (PUD), Planned Community Development District (PCDD), and Town Center (TC) Zoning Districts may be approved through the conditional use permit process as described in § 152.035.

(6) Exterior food and beverage vending machines, ice machines, and propane tank exchanges must be in good repair at all times.

(E) *Warehousing, incidental repair, or processing.*

(1) In the B1 - B-4 Districts, accessory warehousing may only be conducted in up to 30% of the gross floor area of the principal building.

(2) Must be necessary and related to the permitted principal use.

(F) *Storage shed when accessory to a daycare facility or a religious institution.*

(1) *Setback adjacent to rights-of-way.* No storage sheds are permitted between a public right-of-way and the principal structure.

(2) *Interior side or rear setbacks.* No storage sheds are permitted closer than five feet from interior side property lines.

(3) *Structure size.* Storage sheds may not exceed 120 square feet.

(4) *Structure height.* Storage sheds may not exceed 12 feet in height.

(5) No more than one storage shed is permitted per lot of record.

(6) The storage shed must be on the same lot of record as the daycare facility or religious institution and the lot of record must not have more than one detached storage shed.

(7) Storage sheds shall not be designed or used for human habitation.

(8) Storage sheds shall have the same or similar facade and roof colors as the principal building.

(9) The storage shed must be removed upon change of use of the principal building to a use other than a daycare facility or a religious institution.

(G) *Farmers' market.*

(1) No portion of the use or event shall take place within 200 feet, as measured in a straight line from the closest point of the property line of the property upon which the farmers' market is located, to the property line of any R-1 zoned property with residential buildings.

(2) A farmer's market shall be conducted only within a parking lot that has a minimum of 200 off street parking spaces. It is not required that all 200 spaces be used for the market.

(3) Parking and display areas associated with the sale shall not distract or interfere with existing business operations or traffic circulation patterns.

(4) Display areas and parking spaces shall use those parking lot spaces that are in excess of the minimum required parking for the primary use of that property.

(5) A farmers' market shall provide one and one-half parking stalls per producer and one and one-half customer parking stalls per producer.

(6) Sales merchandise trailers, temporary stands, etc., shall be located on an asphalt or concrete surface.

(7) The owner/operator shall have the written permission of the current property owner to locate on a specific site.

(8) No uses or displays shall be permitted in required green areas, parking setback areas, or any right-of-way or other public property.

(9) Signage shall be limited to one sign not to exceed 32 square feet. The sign may be a banner, shall have a professional appearance, and shall be mounted or erected in an appropriate location. The sign may be illuminated, but must comply with all requirements of Chapter 30 of this title.

(10) All lighting shall comply with the lighting standards of Chapter 150 of the City Code.

(11) All producer merchandise shall be unloaded prior to the opening of the market and confined to the off street parking lot area. No on street parking or unloading shall be allowed.

(12) No public address system or speakers shall be used.

(13) The site shall be kept in a neat and orderly fashion, free from litter, refuse, debris, junk, or other waste, which results in offensive odors or unsightly conditions.

(14) Display of items shall be arranged in as compact a manner as reasonably practicable with particular reference to vehicle and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.

(15) All products, materials, quantities to be sold or displayed, and the dates, times, and duration of the market must be approved by the City Council.

(16) If the farmers' market is operated by a person other than the property owner, the property owner must notify the city of the full name, address, date of birth and telephone number of the operator in writing. The property owner is responsible for the actions of the operator and for compliance with the conditions of this section.

(H) *Outdoor sales and display.*

(1) The designated area must be identified on the site plan.

(2) The designated area cannot block sidewalks.

(3) The designated area must not encroach into setbacks.

(I) *Outdoor storage.* Outdoor storage of materials, equipment, and products accessory and necessary to the principal use must obtain a Conditional Use Permit and comply with the following:

(1) The items in the area designated for outdoor storage must be completely screened from view from adjacent public rights-of-way or adjacent properties.

(2) The area must not be used for the storage of junk vehicles, trash, debris, or other nuisance items as defined elsewhere in the City Code.

(3) The area designated for storage must be clearly defined by fencing, striping, paving, or other means. Any storage outside of the designated area shall be a violation of the Conditional Use Permit.

(4) Outdoor storage is not permitted in the Highway Overlay (HO) District.

(5) Height of materials, vehicles, or equipment in outdoor storage area shall not exceed the height of the principal structure.

(6) The following performance standards apply to outside storage:

Figure 152.362.01: Outdoor Storage Requirements

		Zoning Districts			
		B3	***B4***	***BP***	***I***
Minimum lot area to allow outside storage		25,000 sq. feet	2 acres	5 acres	40,000 sq. feet
Area limit on storage allowed		50% of site	70% of site	15% of building footprint	80% of site
Setbacks	From ROW	15 feet	15 feet	75 feet	15 feet
	From side and rear	5 feet	5 feet	50 feet	5 feet
	Adjacent to residential districts	35 feet	35 feet	NP	35 feet
Location restriction		Side or rear yard only	Side or rear yard only	Must be located to the rear of the front entrance	Side or rear yard only

(J) *Mobile food units.*

(1) The owner/operator shall have written permission of the current property owner to locate at a designated area.

(2) The proprietor of the business must keep copy of the mobile food unit license with the unit and demonstrate compliance with the license upon inspection.

(3) The area(s) designated for the mobile food unit and accessory outdoor seating may not block sidewalks, impede pedestrian or vehicular traffic, or interfere with public safety.

(4) No mobile food unit or accessory outdoor seating area may occupy parking spaces which may be leased to other businesses or used to fulfill its minimum parking requirements or any handicap accessible parking space.

(5) Mobile food unit locations are limited to private property located in a Business District as listed in § 152.361.

(6) Mobile food units shall be located on an asphalt or concrete surface.

(7) The owner/operator must provide trash receptacles for customer use and keep the site in a neat and orderly fashion, free from litter, refuse, debris, junk or other waste which results in offensive odors or unsightly conditions.

(8) Temporary signage is permitted in accordance with § 150.06(A)(6) pedestrian signs.

(9) Mobile food units cannot locate within 100 feet of from the main entrance of an eating establishment or any outdoor dining area.

(Ord. 2000-936; Am. Ord. 2005-1032, passed 2-7-05; Am. Ord. 2007-1081, passed 11-26-07; Am. Ord. 2010-1118, passed 10-4-10; Am. Ord. 2012-1133, passed 3-5-12; Am. Ord. 2012-1143, passed 5-21-12; Am. Ord. 2014-1177, passed 7-7-14)

§ 152.363 ACCESSORY STRUCTURES.

Only commercial fences and walls that meet the following specifications are permitted as accessory structures on any site in a business district.

(A) *Prohibited structures* Fences or walls that detain or inhibit the natural flow of surface water drainage to and from abutting properties are prohibited.

(B) *Setbacks.*

(1) *Public right-of-way.* Fences and walls more than 30 inches in height may not be constructed between the public right-of-way and the facade of the principal building.

(2) Interior side or rear. No setback.

(C) *Access required.*

(1) Where any fence connects to a building at least one gate with a minimum width of two feet, six inches is required to allow access around the building.

(2) Fences and gates controlling access to the property must be approved by the City Manager before a building permit may be issued or approval is given through another process.

(D) *Height.* No fence may exceed eight feet, six inches as measured from the top of the fence or supports to grade. Exceptions to this height may be made for fences enclosing tennis courts and other similar recreational uses with the approval of the City Manager.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03)

LANDSCAPING AND SCREENING STANDARDS FOR BUSINESS DISTRICTS

§ 152.370 PURPOSE.

The purpose of establishing minimum landscape standards is to enhance the city's environmental and visual character for its citizens'

use; and enjoyment; preserve and stabilize the ecological balance in the city; establish a healthy environment by using vegetation to mitigate pollution's ill-effects; improve property values; protect public and private investments; and promote high quality development in the city.

(Ord. 2000-936; Am. Ord. 2008-1085, passed 3-24-08)

§ 152.371 LANDSCAPE PLAN REQUIRED.

Prior to the issuance of a building permit for new construction or expansion of a structure in any business district (B-1, B-2, B-3, B-4, BP, I, PCDD, TC, PUD) a landscape plan must be submitted for review and approval to the City Manager in compliance with the Site Plan Review process in §§ 152.030 through 152.039. Review and approval of a landscape plan must also be required for new parking lots and changes to existing parking areas that create or affect more than four stalls prior to issuance of any permits, including snow removal. Landscape plans must be prepared by a landscape architect and be overlaid on the grading plan.

(Ord. 2000-936; Am. Ord. 2008-1085, passed 3-24-08)

§ 152.372 INSTALLATION OF LANDSCAPE MATERIALS.

All landscaping elements and plant materials must be installed with current professional horticultural standards.

(Ord. 2000-936; Am. Ord. 2008-1085, passed 3-24-08)

§ 152.373 LANDSCAPING STANDARDS.

(A) *Landscaping standards.* Mixed use, commercial, and industrial uses shall be subject to the landscaping requirements. The landscape requirements have been divided into four categories: Canopy Cover (C), Foundation Landscape (FL), Open Areas Landscape (OL), Landscape Screen (LS) and street trees.

(1) *Canopy cover.* The purpose of this requirement is to mitigate the effects of vehicular hardscape by establishing tree canopy cover to intercept rainfall, protect pavement from sun deterioration, reduce the heat island affect, and improve aesthetics. Vehicular hardscape area shall include all loading drives, parking lots, driveways, dropoffs and other areas covered with a hard surface intended for vehicles.

(a) *Vehicle hardscape area requirements.* A minimum of one large tree or two medium trees shall be provided per 360 square feet of required parking lot area green space. These trees shall be located within parking areas and not within any required perimeter landscaping area. Pervious pavements are considered 50% hardscape.

(b) *Placement.* Required canopy trees shall be located within the parking lot area islands (minimum width of six feet and total area of 180 square feet if designed as end island or nine feet in with if designed as continuous island between bays.

(2) *Foundation landscape (FL).* The purpose of this requirement is to soften and enhance building architecture, define access points, add color and seasonal interest, and to blend buildings in with the natural environment.

(a) *Building perimeter landscaping requirement.* At least 50% of the total building perimeter shall be sodded or landscaped with approved ground cover, low level plantings in an area of no less than six feet in width.

(3) *Open areas landscape (OL).* The purpose of this requirement is to provide general site beautification and high aesthetic quality with a mix of plant materials in open areas. Open areas include all areas not occupied by building or hardscape. Open areas landscaping shall meet the following requirements.

(a) *Open area landscape requirements.* Each development must have at least the minimum percentage open space shown in the following table.

Figure 152.373.01 Minimum Required Open Space

	Minimum Open Space Requirement				

Total development site	B-1 30%	B-2 30%	B-3 and B-4 and Mixed Use 20%	BP 30%	I 20%

(b) The open space areas must not be covered by a building or other impervious surface, and must be planted with trees, shrubs, flowers, native plant species or similar and covered with sod, landscape rock or mulch. All site areas and areas that have been disturbed during construction must be covered with sod to property lines and/or adjacent rights-of-way. Rock and mulch may be substituted for sod in landscaping planting beds. Areas used for demonstrated parking cannot be used to fulfill the open space requirement. Interior parking lot landscaping provided on site to meet requirements in § 152.145(L) counts towards this open space requirement.

(c) Planned Community Development District (PCDD) and Planned Unit Development (PUD) sites shall use the B1 Zoning District landscaping requirements; Town Center (TC) shall use the B3 Zoning District landscaping requirements; however can be modified through the Site Plan Review Process.

(d) *Plant diversity*. No more than 25% of any trees planted shall come from the same family and 15% of the same species. In addition the landscape plan design shall, at a minimum, provide at least three of the following required numbers of trees and shrubs in addition to any trees and shrubs required for screening in § 152.375:

1. One overstory tree per 3,000 square feet of open area.
2. One ornamental tree per 1,500 square feet of open space.
3. One evergreen tree per 3,000 square feet of open area, except on sites where security, pedestrian or traffic safety are a concern evergreens may be excluded or installed in a reduced number.
4. One deciduous or evergreen shrub per 100 square feet of open area.

(4) *Street trees*. (a) The purpose of this requirement is to soften and screen street corridors, define site access points, and blend site and streets in with the natural environment. Trees are required at the rate of one tree per 70 linear feet of road frontage, within the property line, where the property fronts any public road. Trees may be planted in the right-of-way if the species is listed in Table 152.373.01(A) of this Code and have a minimum trunk diameter of two inches measured six inches above grade.

Table 152.374.01A Acceptable Street Trees	
Acceptable Shade Trees	Acceptable Ornamental Dwarf Trees
Bi-Color Oak (swamp white oak) Black Ash Columnar Norway Maple Freeman Maple Ginko (no seed producing) Hackberry Imperial Honey Locust Little Leaf Linden Mancana Ash New Horizon Elm Northwood Maple Sugar Maple Summit Ash River Birch Triumph Elm (street)	Amur Maple (single stem) Heritage River Birch Ironwood Japanese Lilac Tree Korean Mountain Ash Newport Plum Pink Spire Crabapple Red Splendor Crabapple
Additional species may be allowed with City Manager approval	

(b) Evergreens shall not be planted as a street tree.

(c) The boulevard (planting area) must be at least eight feet in width.

(d) The street tree planting site must be located as follows:

1. Fifty feet or greater from street curb intersections as per § 152.323.
2. At least 15 feet from curb on Class-I collector and any arterial streets.
3. At least ten feet from curb on local or Class-II collector streets.
4. At least ten feet from any sewer line, water line, or driveway.
5. At least five feet from a fire hydrant per § 93.26 and the International Fire Code.
6. At least five feet from any gas. electric, telephone, cable TV or other underground utility.
7. At least three feet from any sidewalk or trail.
8. At least 20 feet from overhead utility cables or using an approved ornamental dwarf tree noted in Table 152.373.01(B).

(e) Street tree species and placement will be reviewed and approved by the Operations and Maintenance Department as not to interfere with existing or proposed utility systems.

(Ord. 2000-936; Am. Ord. 2006-1059, passed 6-5-06; Am. Ord. 2008-1085, passed 3-24-08; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.374 LANDSCAPING GUIDELINES.

(A) *Landscaping guidelines.* The purpose of the guidelines and technical requirements is to encourage plant longevity, minimize maintenance, and mitigate conflicts with other site features. An initial investment in high quality materials, careful design and planning, and proper construction techniques can result in plant longevity and long term maintenance cost reduction.

(1) *Species selection.* Appropriate species selection is critical to maximize the benefits of plant materials. Healthy, long lived plants well suited to a site will reduce maintenance and replacement costs, while providing the most aesthetic and environmental gain. Native species in the built environment will supplement and connect the existing natural areas. Diversity is also important for an overall healthy and balanced landscape that is less susceptible to pests and disease.

(2) The city shall maintain a list of approved species which species acceptable trees within the size categories reference in this section. Approved species are classified by size. For each site, plants shall be selected based on mature size and adaptability to site conditions, such as microclimate, salt, pollution and other factors. The list of approved species is not exhaustive. Applicants requesting to plant a species not on the list shall submit species name, height, width, form, hardiness zone, and other relevant information. The city shall classify new species based on tree size standards. For large projects the city may require applicants to comply with the following requirements:

(a) Species diversity;

(b) A minimum percentage of native species;

(c) A minimum percentage of large trees;

(d) A minimum percentage of evergreen streets.

(3) *Prohibitive species.* The following trees/plants are prohibited due their high maintenance costs, surface roots, intolerance to storms, undesirable fruiting habits, or a susceptibility to disease or pests: all species of North American Ash, Cottonwood, Lomardy Poplar, Box Elder, American Elm, and Siberian Elm, Amur Maple, Common Buckthorn, Barberry, Burning Bush, Russian Honeysuckle, Japanese Spirea. The minimum plant size requirements are described in the following table:

Table 152.374.01C Minimum Plant Size Requirements

Plant Type	***Minimum Size****

Large trees	Bare root - 1.75" Balled and burlapped or container - 2" caliper
Medium and small trees	Bare root - 1.5" Balled and burlapped or container - 1.5" caliper
Evergreen trees	6' height
Large shrubs	5 gallon container
Medium shrubs, small shrubs and groundcovers	3 gallon container
Ornamental grasses and perennials	4" pot
* City may limit bare root plantings in areas of high visibility. In selected situations the City may allow ten whip bare root plantings, or five 3/4" caliper bare root plantings to be substituted for 1 large tree. Bare root plantings must be protected with rodent guards.	
a. All boulevard trees shall be balled and burlapped and a minimum size of 2" caliper.	

(C) *Quality credits*. Existing healthy trees that are not susceptible to disease, new larger or smaller sized trees, or decorative landscaping may be credited toward the required trees detailed in this section, and the additional trees required for screening as defined in § 152.375. The following table establishes the landscaping credits.

Figure 152.374.03 Credits		
Vegetation Type	***Size***	***Exchange Credit***
Existing Trees	2" bb (Caliper) Deciduous or between 6' and 14' Coniferous	1 tree
	4" bb (Caliper) Deciduous or 14' Coniferous or larger	2 trees
New larger trees	4" bb (Caliper) or 14' Coniferous	2 trees
	Two 3" bb (Caliper)	three 2" trees
Ornamental Deciduous Trees or smaller overstory	min.1.5" (Caliper)	2 trees may be substituted for 1 overstory deciduous tree (maximum substitution = 50% of required overstory trees)

deciduous Shrubs	10 large shrubs	1 tree
Decorative Landscape Yard		Exterior sculptures, fountains, decorative walks, courtyards and/or additional ponds beyond those required, shown on a landscape plan that meets the intent of this section to the satisfaction of the City Manager and/or City Council

(D) *Energy conservation.* Plant material placement should be designed to reduce the energy consumption needs of the development.

(1) Deciduous trees should be placed on the south and west sides of buildings to provide shade from the summer sun.

(2) Evergreens and other plant materials should be concentrated on the north and west sides of buildings to dissipate the effect of winter winds.

(E) *Sustainable landscaping requirements.* The city encourages the use of special design features such as Xeriscaping; rain gardens/bioretention systems; landscaping with native species; green rooftops; heat island reduction; and aesthetic design. All new development and redevelopment must include two of the following choices in subsections (1) through (3) below or a green roof:

(1) *Xeriscaping.* Xeriscaping is landscaping which uses plants that have low water requirements, making them able to withstand extended periods of drought. Xeriscaping landscapes are a conscious attempt to develop plantings which are compatible with the environment and make a conscious effort to minimize use of water. A minimum of 20% of the total required landscaping vegetation shall be of low water requirement types.

(2) *Rain gardens/bioretention systems.* Bioretention systems can be described as shallow, landscaped depressions commonly located in parking lot islands or within areas that receive stormwater runoff. For credit under this section, the rain garden/bioretention system shall be aboveground and a visible part of the green or landscaped area. Stormwater flows into the bioretention area, ponds on the surface, and gradually infiltrates into the soil bed. Pollutants are removed by a number of processes including absorption, filtration, volatilization, ion exchange, and decomposition. Filtered runoff can either be allowed to infiltrate into the surrounding soil (functioning as an infiltration basin or rainwater garden), or discharged to the storm sewer or directly to receiving waters (functioning like a surface filter). The use of under drain systems are discouraged unless where infiltration is prohibited by the water resources management plan. Runoff from larger storms is generally diverted past the area to the storm drain system.

(3) *Landscaping with native species.* Fifty percent of the plantings used in the landscape plan shall be of native plant communities of Brooklyn Park on file with the city and approved by the City Planner. These plant communities include:

(4) *Green rooftops.* Green rooftops are veneers of living vegetation installed atop buildings, from small garages to large industrial structures. Green rooftops help manage stormwater by mimicking a variety of hydrologic processes normally associated with open space. Plants capture rainwater on their foliage and absorb it in their root zone, encouraging evapotranspiration and preventing much stormwater from ever entering runoff streams. What water does leave the roof is slowed and kept cooler, a benefit for downstream water bodies. Green roofs are especially effective in controlling intense, short duration storms and have been shown to reduce cumulative annual runoff by 50% in temperate climates. A minimum of 50% of the total roof area shall be planted material. Living vegetation must cover 90% of the surface of the green roof area.

(E) *Aesthetic design.* Sites shall be designed to include two of the following: public art, fountains, plazas, perennial beds, landscaping at entry of the site, or other amenities reviewed and approved by the City Planner.



(F) *Intersection visibility.* All landscape materials must comply with the intersection visibility requirements of §§ 152.320 through 152.325.

(G) *Utility interference.* Overstory and coniferous trees may not be installed underneath overhead utility lines nor may any landscape materials be installed over utility lines except in compliance with the City Code and city policy.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2006-1059, passed 6-5-06; Am. Ord. 2008-1085, passed 3-24-08; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.375 SCREENING.

All mechanical or accessory uses, including, but not limited to, exterior storage areas, exterior loading docks, service areas, mechanical areas, and rooftop equipment, must be screened as follows:

(A) All ground level mechanical equipment and accessory uses must be screened using a wing-wall or other architectural features that are an integral part(s) of the building or landscaping materials. Landscaping materials must consist primarily of evergreen materials and must achieve a minimum of 50% opacity at planting and 80% opacity at maturity.

(B) Rooftop equipment screening must be provided by the building parapet, or incorporate similar architectural features as the building, use the same exterior materials as the principal structure, or be designed so that the equipment is not visible from six feet above ground level on any property line of the applicable site.

(C) Incidental equipment deemed unnecessary to be screened by the City Manager must be of a color to match the building, roof, or the sky, whichever is most effective.

(D) Metal cabinets and/or fences used to enclose and protect mechanical equipment may not substitute as screening.

(E) Berm slopes must not exceed 4:1.

(Ord. 2000-936; Am. Ord. 2003-989, passed 2-10-03; Am. Ord. 2008-1085, passed 3-24-08; Am. Ord. 2016-1212, passed 11-14-16)

§ 152.376 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN.

Landscaping plans shall promote safety and visibility in order to reduce crime. The landscaping plan shall further the principles of Crime Prevention Through Environmental Design (CPTED) through the incorporation of the principles of natural surveillance, natural access control, and territorial reinforcement through the following:

(A) Providing visibility to building and site entrances from public rights-of-way.

(B) Providing proper placement of landscape materials not to create shadows in public outdoor spaces, such as parking lots and walkways.

(C) Providing proper placement of landscape materials to discourage pedestrian access in sensitive areas.

(D) In areas where the required number of evergreen trees would be contrary to the CPTED principals, the required quantity of evergreen trees may be exchanged for deciduous trees.

(Ord. 2008-1085, passed 3-24-08)

§ 152.377 (RESERVED).

§ 152.378 IRRIGATION SYSTEM REQUIRED.

(A) All landscaped areas, including parking area islands must be equipped with an underground, automatic irrigation system or an alternative as outlined in § 152.378(B). The irrigation system must include a flow meter, moisture sensing devices and must be calibrated to meet all applicable City Codes. Irrigation of adjacent rights-of-way is required; however, irrigation equipment must not be located within the right-of-way without approval from the City Manager.

(B) In lieu of an underground automatic irrigation system, an alternative irrigation plan may be approved. An alternative plan can include, but is not limited to, rain gardens, closed rain barrels, or greywater systems. Any alternative system must ensure that landscaping will be provided with adequate irrigation.

(1) The greywater shall be contained on the site where it is generated.

(2) Greywater shall be directed to and contained within an irrigation or disposal field.

(3) Ponding or runoff is prohibited and shall be considered a nuisance.

(4) Greywater may be released above the ground surface provided at least two inches of mulch, rock, or soil, or a solid shield covers the release point. Other methods which provide equivalent separation are also acceptable.

(5) Greywater systems shall be designed to minimize contact with humans and domestic pets.

(6) Greywater shall not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities.

(C) Arid landscaping plans are exempt from irrigation requirements.

(Ord. 2000-936; Am. Ord. 2008-1085, passed 3-24-08; Am. Ord. 2012-1133, passed 3-5-12)

§ 152.379 CONFORMANCE WITH APPROVED PLAN.

All landscaped areas must be in conformance with the approved landscaping plan. Planted landscaped materials must be replaced if it becomes diseased, dies, or removed. All landscaped areas and adjacent rights-of-way must be maintained in conformance with Chapter 97: Grass, Weed, and Tree Regulations.

(Ord. 2008-1085, passed 3-24-08)

ARCHITECTURAL STANDARDS IN BUSINESS DISTRICTS

§ 152.390 PURPOSE.

The purpose of establishing criteria for architectural design and exterior facing materials is to ensure a high standard of development that is compatible with neighboring development and contributes to a community image of permanence, stability, and visual aesthetics, while preventing impermanent construction and use of materials that are unsightly, rapidly deteriorate, contribute to depreciation of neighborhood property values, or cause urban blight. The standards are further intended to ensure coordinated design of building facades, additions and accessory structures in order to prevent visual disharmony. The standards apply in all business districts (B-1, B-2, B-3, B-4, BP, I.)

(Ord. 2000-936)

§ 152.391 GENERAL REQUIREMENTS.

(A) Building construction and design may be used to create a structure with equally attractive sides, except for those instances specified in this section.

(B) Primary building entrances must be clearly defined to promote visual interest and architectural presence.

(C) Large, uninterrupted expanses of a single material are not permitted, unless the design is obviously superior to the intent of this chapter as determined by the City Manager.

(D) No wall that faces a public right-of-way, parks, the public view from adjacent properties or a residential use or district shall have an uninterrupted length exceeding 100 feet without including at least two of the following: change in plane, change in texture or masonry pattern, two class one materials, windows in a manner that is impactful to the design, or an equivalent element that subdivides the wall into human scale proportions.

(E) Any other building, such as the case with multiple buildings on a single parcel, accessory buildings, or parking structures, should be of compatible design and materials with emphasis on the position(s) of the building(s) to give visual interest.

(F) Additions for principal buildings constructed before the effective date of the chapter may be of similar materials and design as the principal structure.

(Ord. 2000-936; Am. Ord. 2016-1212, passed 11-14-16)

§ 152.392 SPECIFIC REQUIREMENTS.

Different exterior materials must be specifically approved as part of a development plan in conjunction with an Overlay, the Planned Unit Development District (PUD) or Planned Community Development District (PCDD).

(A) *Classes of materials.* For the purpose of this section, acceptable exterior materials are divided into Class 1 and Class 2 categories as shown in the following table:

Figure 152.392.01 Classes of Materials

Class 1	*Class 2*
1. Brick 2. Natural or cementious stone 3. Glass, or other glazing materials 4. Masonry stucco 5. Architectural metal panels 6. Specialty concrete block (including textured, burnished block or rock faced block) 7. Architecturally textured concrete precast panels 8. Other materials not listed elsewhere as approved by the City Manager or as recommended by the Planning Commission	1. Industrial grade concrete precast panels 2. Wood 3. Tile (masonry, stone or clay), ceramic 4. Other materials not listed elsewhere as approved by the City Manager or as recommended by the Planning Commission 5. EFIS in conformance with the ICC ES report

(B) *Required combination of materials.* Buildings must incorporate classes of materials for each facade in the following manner:

(1) Office, service, and retail buildings.

(a) Front facades and side and rear facades visible from public right(s)-of-way, the public view from adjacent properties, parks,

or residential uses or districts must be composed of at least two or more Class 1 materials totaling 65% of the facade.

(b) Side and rear facades not visible from public right(s)-of-way, parks, public view from adjacent properties or residential uses or districts must use a combination of Class 1 or 2 materials.

(c) Facades visible from public right(s)-of-way must include windows, doors, canopies or other treatments that help mitigate the appearance of blank walls.

(2) Industrial and warehouse buildings, multi-tenant office/industrial/warehouse or showroom/warehouse or other combinations.

(a) Front facades must be composed of at least two or more Class 1 materials totaling 65%.

(b) Side and rear facades visible from public right(s)-of-way, parks, public view from adjacent properties, or residential uses or districts must be composed of at least two or more Class 1 materials totaling 50%.

(c) Side and rear facades not visible from public right(s)-of-way, parks, public view from adjacent properties or residential uses or districts must use a combination of Class 1 or 2 materials.

(3) Buildings for uses that do not conform to any of the above list of uses must conform to the materials and proportion of office and retail buildings listed in subdivision (1), above.

(4) *Fence materials.* All accessory structures must be constructed of durable, weather resistant materials and properly constructed and anchored in compliance with the Uniform Building Code.

(a) Prohibited fence materials include electric, chicken, concertina or barbed wire fences.

(b) Restricted fence materials.

1. Silt and other construction fences must be removed from the property at project completion.

2. Snow fences must be removed from all properties by April 1st. If snow is still present within one foot of the fence location, removal may be extended at the discretion of the City Manager.

3. Chain link fences must have a top rail, barbed ends must be placed at the bottom of the fence, and posts must be spaced at intervals not to exceed ten feet.

(c) *Finished sides.* If the material used in fence construction is not finished on both sides, the finished side of the material must be on the outside, facing the abutting or adjoining properties and all posts or structures supporting the fence or wall must be on the inside.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2016-1212, passed 11-14-16)

§ 152.393 EXTERIOR SURFACE FINISHES.

All exterior surfaces must be finished with the appropriate sealant, stain, paint, or other process (to manufacturer's specifications) to withstand the elements and prevent fading, chipping, chalking, cracking, peeling, warping, rot, rust, water damage, or other natural degrading process, with the exception of those materials, like copper, where the degrading process is architecturally desirable and must not be allowed to become or remain in an unsafe condition as defined by the Uniform Building and Fire Codes.

(Ord. 2000-936)

PLANNED COMMUNITY DEVELOPMENT DISTRICT (PCDD)

§ 152.410 PURPOSE.

The district is designed for use where the general areas contain a unique physical or recreational feature or require detailed, coordinated planning efforts to achieve specific goals.

(Ord. 2000-936)

§ 152.411 ESTABLISHMENT.

This zone is hereby established within the City of Brooklyn Park and may be applied to those areas designated on the Zoning Map.

(Ord. 2000-936)

§ 152.412 SITE PLAN REVIEW.

All proposed uses are subject to the Site Plan Review requirements found in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.413 APPLICATION COMPONENTS.

Each application for a General Plan of Development must address the following components and may contain a descriptive statement of objectives, principles and standards used in its formulation:

(A) *Land use component.* The distribution, location and extent of acres of land devoted to each land use.

(B) *Circulation component.* All transportation facilities included in the area, including the methods of handling pedestrian and bicycle crossing points.

(C) *Population component.* Estimated future residential population changes per school districts as well as construction timing and phasing; indicating square footage by type for office and retail facilities and such data to determine traffic generation, parking requirements, and water and sewage consumption and capacity flows.

(D) *Subdivision and design component.* All those items required by Chapter 151 of the City Code, plus information that conforms with the following must be provided to the city for review and approval:

(1) *Housing*. The proposed house styles and plans for integrating different housing design must be provided in sufficient detail to provide an accurate visualization of the final housing product. A declaration of covenants, conditions and restrictions must be presented to the Planning Commission and approved by the City Council relating to building square footage, driveway material, facade treatment, roof pitches, roofing materials, landscaping, garage or storage accommodations, standards for accessory buildings, and the like.

(2) *Services and facilities*. The location, extent and phasing of all existing and proposed sanitary sewage, water and storm sewer, surface drainage retention and detention ponds, local utilities, rights-of-way, easements, and utility facilities may be provided. The description may include proposed ownership, method of operation and maintenance and phasing of construction and phasing of maintenance release and acceptance to occupy completed structures of all services and facilities.

(3) *Marketing*. The location, size, height and type of on-site advertising signs and model homes, subdivision identification signs, monument signs, landscaping, fencing, berming, and all other ornamental treatment of entrances must be provided.

(E) *Additional components.* The city may require that additional components be submitted that reasonably relate to the development or the neighborhood in which the development is located. These components may include, but are not limited to, an economic feasibility study or an economic benefit analysis, a recreation component, an environmental impact component, social services component, and a public buildings component.

(Ord. 2000-936)

§ 152.414 PROCEDURES.

Submission and review of a General Plan of Development, or an amendment, may require a public hearing and follow the same procedures as a Conditional Use Permit as described in §§ 152.030 through 152.039. All proposed uses are subject to the Site Plan Review requirements found in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.415 USES.

Unless otherwise prohibited by law within the city, any use of land or buildings that is clearly designated by type or category on the approved and adopted General Plan of Development or the City's Comprehensive Plan may be allowed as follows:

(A) Uses on properties guided for industrial may be defined as those uses listed for the Business Park (BP) District.

(B) Uses with greater impact on surrounding land uses are subject to additional regulations in §§ 152.243, 152.245, 152.262, 152.263, 152.323, 152.324, 152.325, 152.343, 152.344, 152.362, 152.363.

(C) Conditional uses defined in the Residential and Business Districts may be subject to the administrative procedures defined in § 152.035.

(D) With the exception of a temporary greenhouse, in conformance with § 152.345 and seasonal displays and sales at full service grocery stores in conformance with § 152.362, no outdoor display, sales, or storage may be allowed in this district. All uses previously approved with outdoor display, sales or storage must be in conformance with §§ 152.050 through 152.055 of this chapter.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03; Am. Ord. 2005-1051, passed 11-7-05)

§ 152.416 OPEN SPACE.

(A) The open space required by this section must be arranged and provided in such a manner that it is accessible and usable for the purpose and persons intended. Commercial agricultural pursuits do not constitute open space as required by this section.

(B) Apartments must have a minimum of 50% of the total lot area which must be devoted to open space consisting of landscaping, lawn area, or non-commercial outdoor recreational facilities incidental to the residential development such as private swimming pools, putting greens and tennis courts, walkways, uncovered patio areas, and fences.

(Ord. 2000-936)

§ 152.417 PERFORMANCE STANDARDS.

(A) All uses must comply with the General Performance Standards shown in this chapter, unless specifically approved and amended by the City Council in the development plan.

(B) Architectural Design. All commercial, industrial, and institutional structures in the PCDD District must include at least two of the following:

(1) Variety in building elevations. No wall may have an uninterrupted length exceeding 80 feet without two of the following: changes in plane, color, texture or material pattern; inclusion of windows; or equivalent elements that subdivides the wall.

(2) A minimum of 50% of each building facade must be brick or stone. This standard applies to all walls of a building, including walls proposed to be removed for future expansion.

(3) Pitched roofs, or in the case of flat roofs, variable roof heights.

(Ord. 2000-936; Am. Ord. 2002-977, passed 6-24-02; Am. Ord. 2003-997, passed 5-12-03)

PUBLIC INSTITUTION DISTRICT (PI)

§ 152.430 PURPOSE.

The Public Institution District (PI) is intended to provide for a district for public buildings, uses and needs that otherwise may not fit into other zoning districts because of their specialized land use needs and public purpose.

(Ord. 2000-936)

§ 152.431 ESTABLISHMENT.

The Public Institution District is hereby established within the City of Brooklyn Park. This district may be applied only to those properties designated for public institution uses on the Comprehensive Plan Land Use Map.

(Ord. 2000-936)

§ 152.432 SITE PLAN REVIEW.

All proposed uses are subject to the Site Plan Review requirements found in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.433 PERMITTED USES.

(A) *Schools and daycares*. Includes public and private primary and secondary schools, pre- schools, and daycares, subject to Site Plan Review requirements of § 152.033; and public or private post-secondary institutions like colleges, universities, junior colleges, and trade schools.

(B) *Government buildings*. Including fire and police stations, government office buildings, maintenance buildings, recreation facilities, libraries, water towers or purification plants and the like.

(C) Religious institutions.

(D) Non-profit community agencies, recreation centers, or youth centers.

(E) Hospitals.

(Ord. 2000-936; Am. Ord. 2007-1070, passed 3-26-07; Am. Ord. 2009-1107, passed 10-19-09)

§ 152.434 CONDITIONAL USES.

No permit may be issued for construction for a building, structure or land use considered conditional unless a Conditional Use Permit has been granted by the City Council in accordance with §§ 152.030 through 152.039.

(A) Telecommunication towers as regulated by §§ 152.090 through 152.096.

(B) Outdoor storage of equipment, landscaping materials, etc. when accessory to a government building or maintenance facility.

(Ord. 2000-936; Am. Ord. 2007-1070, passed 3-26-07)

§ 152.435 PERFORMANCE STANDARDS.

(A) Building setbacks:

(1) From public rights-of-way - 10 feet.

(2) Side - 10 feet.

(3) Rear - 10 feet.

(4) Side or rear adjacent to a residential district - 50 feet.

(B) No minimum lot size is required.

(C) All uses must conform to the performance standards for business districts listed as defined in §§ 152.070 through 152.182 and §§ 152.300 through 152.393 where applicable.

(D) Maximum height is 60 feet. For each one foot greater than 60 feet of building height, as measured from the highest adjacent grade to the top of the roof, the required front, side and rear setbacks must be increased one foot.

(E) Sites must conform to the B3 Zoning District landscaping requirements of § 152.374.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01; Am. Ord. 2007-1070, passed 3-26-07)

§ 152.436 ACCESSORY USES.

(A) The following accessory uses are permitted for all uses, however are limited to 10% (each) of the total building area if they are located within a religious institution or non-profit community agency:

(1) Retail sales.

(2) Class-I restaurants.

(3) Assembly halls (other than for religious worship).

(4) Day care.

(B) The following accessory uses are conditional for all uses, however are limited to 10% (each) of the total building area if they are located within a religious institution or non-profit community agency:

(1) Class-II restaurants.

(2) Rectories for religious institutions (either within the principal structure or as a separate building).

(Ord. 2007-1070, passed 3-26-07)

CONSERVANCY DISTRICT (CD)

§ 152.450 PURPOSE.

The Conservancy District (PI) is intended to provide for a district for areas that contain valuable environmental qualities which are to be preserved as park or open space amenities and to prevent the over-crowding of land, to avoid undue concentration of population, a specific public purpose, and/or alleviate the burden of development from environmentally sensitive lands. These areas may also have been found to be unsuitable for residential, commercial, or industrial development due to flooding or bad drainage, slope, adverse soil conditions, rock formations, and/or unique natural features.

(Ord. 2000-936)

§ 152.451 ESTABLISHMENT.

The Conservancy District is hereby established within the City of Brooklyn Park.

(Ord. 2000-936)

§ 152.452 INTERPRETATION OF DISTRICT BOUNDARIES.

When uncertainty exists with respect to the Conservancy District boundaries, the following rules apply:

(A) District boundaries along a stream are intended to represent the high water time of a regional flood, provided, however, that along a stream such line must not be less than 50 feet from the center of such stream.

(B) District boundaries in a wetland area are intended to represent the edge of a swamp, marsh or other wetland area. The edge is defined as the mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The edge is commonly that point where the natural vegetation changes from predominately aquatic to predominately terrestrial.

(C) District boundaries in a public park, common open space areas, or public lands are intended to represent the property lines of such area.

(Ord. 2000-936)

§ 152.453 PERMITTED USES.

(A) Outdoor recreational uses operated by a governmental agency or conservation group, homeowners or private association and facilities for making the area useful to public or association.

(B) Open space areas connected with residential, institutional, or business development.

(C) Conservation uses including drainage control, forestry, wildlife sanctuaries and facilities for making same available and useful to public.

(D) Agricultural uses.

(E) Nature study areas and arboretums.

(F) Transient produce sales. Transient (or itinerant) produce sales by merchants who have applied for and received permits in compliance with all other sections of the City Code and only in the Old Town Hall Square at Zane Avenue North and Brooklyn Boulevard.

(Ord. 2000-936)

§ 152.454 CONDITIONAL USES.

(A) No permit may be issued for construction for a building, structure or land use considered conditional unless a Conditional Use Permit has been granted by the City Council in accordance with §§ 152.030 through 152.039.

(B) In addition to §§ 152.030 through 152.039, all conditional uses in this district must be reviewed to determine if through good site and engineering designs a development can be created which is compatible and harmonious with the natural amenities of the Conservancy District area and with surrounding land uses. Applications must be accompanied by an overall plan of the entire site showing roads, parking areas, lot lines, easements, the location of tree cover including the designation of individual trees of 15 inches in diameter or more, the location of other natural and biological features such as wetlands and areas of valuable wildlife habitat, and the location of proposed structures in addition to any other information typically required for a Conditional Use Permit.

(C) The approval of an application requires a finding that:

(1) The development will not detrimentally effect or destroy natural features such as ponds, streams, wetlands and forested areas, but will preserve and incorporate such features into the developments site design.

(2) The location of natural features and the site's topography have been considered in the designing and siting of all physical improvements.

(3) Adequate assurances have been received that clearing of the site of top soil, trees and other natural features before the commencement of building operations will not occur. Only those areas approved for the placement of physical improvements may be cleared.

(4) The development will not substantially reduce the natural retention storage capacity of any watercourse, thereby increasing the magnitude and volume of flood at other locations.

(5) The soil and subsoil conditions are suitable for excavation and site preparation and the drainage is designed to prevent erosion and environmentally deleterious surface runoff.

(6) The development will be free from offensive noise, vibration, smoke, dust, and other particulate matter, odorous matter, fumes, water pollution and other objectionable influences.

(7) The applicant will be substantially damaged by being required to place the intended development outside the Conservancy District.

(Ord. 2000-936)

§ 152.460 PURPOSE.

(A) The Town Center Zoning District is established to provide a flexible framework for the creation of high quality, comprehensively designed commercial and residential neighborhoods. The district establishes standards for exterior architecture and site design which are intended to contribute to the quality, visual aesthetics, permanence, stability of the community, and enhancement of the city's tax base. This district may be applied at intersections of arterial and collector streets, in either developing or redeveloping locations.

(B) Multiple types of development are encouraged, with developments designed to promote walking, bicycling and transit use. The placement of building edges and treatment of architecture, parking, landscaping, sidewalks, and public spaces are to be carefully planned in order to achieve the pedestrian oriented development envisioned for the district.

(C) All development shall conform to the Comprehensive Plan and the 1999 Northern Area Master Plan.

(Ord. 2001-949, passed 2-26-01; Am. Ord. 2014-1180, passed 9-2-14)

§ 152.461 PERMITTED USES.

There are no permitted land uses.

(Ord. 2001-949, passed 2-26-01)

§ 152.462 CONDITIONAL USES.

(A) All land uses must conform to the Comprehensive Plan and the 1999 Northern Area Master Plan.

(B) The following uses are allowed with a conditional use permit.

(1) Residential, including detached or attached housing units at densities which conform to the Comprehensive Plan.

(2) Offices.

(3) Retail and service businesses.

(4) Public parks.

(5) Mixed use developments which include two or more of the uses listed above.

(Ord. 2001-949, passed 2-26-01; Am. Ord. 2014-1180, passed 9-2-14)

§ 152.463 DESIGN STANDARDS.

All applications for development in the district shall be evaluated on the basis of the standards described in this section.

(A) *Residential Development.*

(1) *Variety of Design.* Specific types of attached housing should be built in small groupings to present large complexes of one housing type. No more than approximately 60 units of any type of townhouse and 100 units of high density units should be built in a single area.

(2) *Single Family House Model.* A single family housing design vocabulary shall be used in multifamily and attached buildings. This will include but not be limited to identifiable front doors, pitched roofs, architectural facades, and transitional architectural features such as porches, and covered stoops.

(3) *Facade Articulation.* Buildings shall address the street with varied and articulated facades, frequent entries and windows. Porches and balconies are encouraged. Facades consisting of long blank walls are prohibited.

(4) *Outdoor Spaces.* Outdoor spaces such as porches and patios shall be used to increase the sense of privacy and security within the housing unit. The boundaries of private outdoor space should be defined with elements such as fencing and landscaping.

(B) *Commercial and Office Development.*

(1) *Height.* Buildings over 100 feet in length shall be at least 12 stories in height for at least 30% of the building length.

(2) *Entrances.* Each building along a public street shall have a clearly identifiable entrance along the sidewalk. Additional entrances may be provided from parking lots on the opposite side.

(3) *Facade Materials.* All buildings shall exhibit variation and detail in their facades, including high-quality materials. Acceptable primary materials are brick, stone, stucco, EFIS, wood and glass. Acceptable accent materials include rock face concrete block and architectural metal. Other materials may be permitted at the city's discretion through the site plan review process if they are consistent with the surrounding environment and the purpose of this section.

(4) *Building Articulation.* Buildings of more than 100 feet in width shall be divided into smaller increments through articulation of the facade. This can be achieved through combinations of the following techniques, and others that meet the objective.

(a) Facade modulation - stepping back or extending forward a portion of the facade.

(b) Vertical divisions using different textures or materials (although materials should be drawn from a common palette).

(c) Division into storefronts, with separate display windows and entrances.

(d) Variation in roof lines by alternating dormers, stepped roofs, gables, or other roof elements to reinforce the modulation or articulation interval.

(e) Arcades, awnings, window bays, arched windows and balconies at intervals equal to the articulation interval.

(f) Providing a lighting fixture, trellis, tree or other landscape feature with each interval.

(5) *Plazas or Seating.* In each commercial area, there should be some outdoor space devoted to public seating, strolling and/or gathering. This space should be integrated into the overall private development, accessible by the system of public walkways, built from long-lasting and attractive materials, usable throughout the year, and lighted for nighttime use.

(C) *Streets, Sidewalks, and Transit Facilities.*

(1) *Streets.* To the maximum possible extent, streets should interconnect. Cul-de-sacs should be avoided and only serve locations otherwise inaccessible due to physical or other constraints.

(2) *Sidewalks.* Sidewalks shall be provided along all streets. Sidewalks shall also connect individual developments within the district.

(3) *Streetscape Improvements.* All streets shall include boulevard trees and, where feasible, landscaped medians. Street lighting shall be of a common design and be of a pedestrian scale.

(4) *Transit.* In all developments, provisions shall be made for transit service. This includes bus staging areas, bus stops, passenger shelters, and other facilities necessary for the provision of transit service.

(5) *Bicycles.* Bicycle racks should be provided near the entrances to commercial buildings.

(D) *Parking.* Parking shall generally conform to the requirements of § 152.142. Flexibility in design of parking facility shall be allowed when part of a coordinated plan of development and when in conformance with the following standards.

(1) *Location.* Parking should be located to the rear of commercial buildings, opposite the street.

(2) *Shared.* Parking should be shared among users to the maximum extent possible so as to reduce the amount required.

(3) *On-Street Parking.* Each local street should include parallel or angled parking.

(4) *Divisions.* Commercial parking lots shall be broken by rows of islands or plantings to the extent feasible.

(5) *Screening.* The view to surface parking areas should be softened by berms, low masonry walls and/or trees and shrubs.

(E) *Signs.* Unless otherwise amended in this section, all provisions of Chapter 150 of the City Code shall apply.

(1) All signs within a development must conform to a consistent design theme.

(2) With the exception of area identification signs, only monument signs shall be allowed.

(Ord. 2001-949, passed 2-26-01)

§ 152.464 SUBMITTAL REQUIREMENTS AND REVIEW PROCEDURES.

All properties proposed for redevelopment in the district shall conform to the submittal requirements and review procedures established in the Planned Development Overlay District (§§ 152.562 and 152.563).

(Ord. 2001-949, passed 2-26-01)

§ 152.465 MODIFICATION OR AMENDMENTS.

Modifications or amendments of a Development Plan shall conform to requirements of § 152.565.

(Ord. 2001-949, passed 2-26-01)

§ 152.466 GENERAL REQUIREMENTS.

The requirements of § 152.564 shall apply to all land within the district.

(Ord. 2001-949, passed 2-26-01)

§ 152.467 REVOCATION OF DEVELOPMENT PLAN.

Revocation of the Development Plan shall follow the process established in § 152.566.

(Ord. 2001-949, passed 2-26-01)

PLANNED UNIT DEVELOPMENT ZONE DISTRICT (PUD)

§ 152.470 PURPOSE.

The purpose of the PUD district is to allow development to occur that is in compliance with the land use designation of the Comprehensive Plan and to allow innovation in development standards to accomplish the following goals:

(A) To promote the creation of distinct areas within the city in a way that encourages social relationships and reduces crime.

(B) To allow mixed use developments in a manner that does not follow traditional zoning requirements, but will effectively implement the Comprehensive Plan.

(C) To produce developments and an environment that are equal to or superior in quality and design than would be achieved with traditional zoning.

(D) To allow for the planning and construction of unified developments and environment that may be phased over time and share common elements such as a site and landscape design, complementary architectural schemes, a roadway network, and open space and/or recreational amenities.

(E) To allow innovation in the creation and design of open space and development density to create well designed developments in a manner that does not follow traditional zoning requirements.

(Ord. 2000-936)

§ 152.471 ESTABLISHMENT.

The Planned Unit Development District is hereby established within the City of Brooklyn Park. The PUD zone district applies to all parcels of land labeled as PUD on the official zoning map. The PUD zone district requirements do not apply to areas with the PUD overlay.

(Ord. 2000-936)

§ 152.472 SUBMITTAL REQUIREMENTS.

All property zoned PUD may require the review and approval of the following:

(A) *Preliminary development plan*. Applicants must submit a preliminary development plan for the entire Development Plan property.

(B) *Development Plan*. Applicants must submit a development plan for the phases of the development under consideration by the Planning Commission and City Council. The Development Plan must allow for the development of the property in compliance with the Comprehensive Plan. All land that is subject to a Development Plan may be under single ownership to unify control, and may be made subject to such legal restrictions or covenants to ensure compliance with the approved Development Plan and other sections of City Code and requirements. The applications for Preliminary Development Plan review and Development Plan review may be combined if desired as long as all procedural requirements for each action is followed and all information required has been submitted.

(C) *Site Plan Review*. All proposed uses are subject to the Site Plan Review requirements found in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.473 PROCEDURES.

(A) The review and consideration of the Preliminary Development Plan and the Development Plan by the city must follow the procedures for the public hearing process as defined in §§ 152.030 through 152.039.

(B) The City Manager must maintain copies of city policy concerning the information required for all applications.

(C) *Development Plan required*. No permits related to the preparation of the site and/or the construction of the project may be issued for a property within a PUD district unless a Development Plan has been adopted by the City Council for the use and development of that entire phase of the property.

(D) *Review*. The Planning Commission and City Council may base their recommendations and actions regarding approval of a Preliminary Development Plan and Development Plan on consideration of the following items:

(1) Conformance of the proposed Plan with the regulations of this section and the Comprehensive Plan.

(2) Internal organization and adequacy of various uses or densities, circulation and parking facilities, urban services, recreation areas, open spaces, screening and landscaping, and the ability to demonstrate that a viable development will be created.

(3) Other factors related to the project as the Planning Commission and City Council deem relevant. The Planning Commission and City Council may attach such conditions to their actions as they determine necessary or convenient to better accomplish the purposes of this section.

(Ord. 2000-936)

§ 152.474 EXPIRATION OF APPROVAL.

The expiration of approval and the ability to apply for time extensions is specified in §§ 152.030 through 152.039.

(Ord. 2000-936)

§ 152.475 DEVELOPMENT PLAN STANDARDS.

The following applies to all Development Plans:

(A) *Residential density.* The density of all residential Development Plans and residential portions of mixed use Development Plans must meet the density ranges of the designated land use categories contained within the Comprehensive Plan. The density must be calculated based upon the amount of gross land area devoted to residential uses excluding wetlands that are designated by federal and state agencies and those classified by the Wetland Conservation Act. The density ranges of this Planned Unit Development district are defined as follows:

(1) *Low density residential use.* Not to exceed three dwelling units per gross acre.

(2) *Medium density residential use.* Not to exceed five dwelling units per gross acre.

(3) *High density residential use.* Not to exceed 13 dwelling units per gross acre.

(B) *Uses.* Any use that is a permitted use in the residential and business districts (§§ 152.200 through 152.293 and §§ 152.300 through 152.393) may be allowed in the Planned Unit Development district as long as the use complies with the Comprehensive Plan designation. Some uses have greater restrictions than others based on their impact with surrounding land uses, those uses are defined in §§ 152.200 through 152.293 and §§ 152.300 through 152.393. Conditional uses defined in §§ 152.200 through 152.293 and §§ 152.300 through 152.393 are subject to the procedures defined in §§ 152.030 through 152.039.

(C) *Area.* There may be no minimum property area for the Development Plan. However, if a property is less than three acres in size, the applicant must demonstrate to the satisfaction of the city that the property cannot be reasonably combined with adjacent properties, and that the type and design of the development is compatible with adjacent areas and land uses. The total maximum property area of a Development Plan may not exceed 80 gross acres unless the City Council finds that due to the unique circumstances of the property, the adjacent land uses or features; or through innovative site planning, use of cluster development techniques, landscaping and/or exterior architectural planning efforts, that the maximum property area should be exceeded.

(D) *External buffer strips.* All buildings and hardsurface areas may be set back an additional distance from exterior adjacent right-of-way of collector or arterial road ways (as designated in the transportation chapter of the comprehensive plan), utility or trail corridors or other similar uses as specified in division (E). The setbacks must be sufficient in size for the placement of berms, landscaping, bicycle/pedestrian paths as determined by the city, or other design features to create cohesive residential neighborhoods or unified non-residential development. The purpose of these buffer strips is to protect residents and building users from noise and other traffic related impacts, to the extent possible. Extra space in the rear yards which may count as an external buffer strips do not count toward the fulfillment of the open space requirements.

(E) *Development envelope.* The development envelope for each building and parking area must be specified on the Development Plan. The development envelope must be large enough to accommodate the buildings and parking area associated with the proposed use(s). The development envelope must demonstrate adherence to all applicable standards of this chapter.

(1) *Lot width and depth.*

(a) *Detached single-family.*

1. *Width at setback.* 80 feet.

2. *Depth.* 130 feet. A maximum of ten percent of lots in any Development Plan may be less than 130 feet.

(b) *Attached two-family.*

1. *Width at setback.* 120 feet.

2. *Depth.* 130 feet.

(c) *All other residential uses.* See §§ 152.200 through 152.293.

(d) *Commercial, industrial, or other non-residential uses.* The width and depth must be proposed and evaluated as part of the development plan.

(e) Additional lot depth or width may be required where residential lots abut utility corridors or collector roads.

(f) *Arterial roads.* An additional 50 feet may be required beyond the required depth for all residential uses.

(g) *Trail corridors.* After the effective date of this chapter, any new residential lot created in this district must have an additional ten feet required for each lot, beyond the required depth, for all residential uses adjacent to trails.

(2) *Setbacks*

(a) *Detached single-family and attached two-family.*

1. *Front.* 30 feet.
2. *Side on a public right-of-way.* 20 feet or the front setback of adjacent lots when they front the adjacent side street.
3. *Interior side.* 10 feet. (Garage or house)
4. *Rear.* 30 feet.

(b) *Townhouses and multiple family dwellings.* See §§ 152.200 through 152.293.

(c) *Commercial, industrial, or other non-residential buildings.*

1. *Front or right-of-way.* 50 feet or the building height, whichever is greater.
2. *Interior side or rear.* 40 feet or the building height, whichever is greater.
3. Impervious surface, including, but not limited to, driveways and parking areas, from right-or-way or residential uses. 40 feet.
4. *From residential areas.* Setbacks from residential areas must be as defined in §§ 152.300 through 152.393.

(F) *Hardsurface coverage/floor area ratio (FAR).* The hardsurface coverage percentage and FAR includes all land within the Development Plan except right-of-way or roadway easements that exist or will be dedicated as part of the subdivision of the property. The maximum hardsurface coverage percentage and floor area ratio for a Development Plan is as follows:

Figure 152.475.01
PUD Hardsurface Coverage and Floor Area Ratios

Use Designation	*Hardsurface Coverage*	*Floor Area Ratio*
Low Density Residential	40%	.5
Medium Density Residential	40%	.5
High Density Residential	50%	1.0
Office/Limited Business	70%	1.0
Commercial	75%	.8
Industrial	85%	1.0
Quasi-Public	50%	.6

Mixed use developments have the same hardsurface coverage and FAR for each use within the development as the use designation indicated in the above table.

(G) *Designated open space:* The provision of undeveloped or natural areas for the enjoyment of development residents is a primary component of the PUD District.

(1) Each Development Plan that contains a residential component must provide at least five percent of the total area of the residential portion of the development for designated open space. Examples of proposals qualifying as open space include public parks, private active or passive recreational uses, trails, nature areas, community gardens, etc. Landscaping and/or recreational equipment in the required designated open space area must be sufficient to implement the purpose of the proposal as approved in the Development Plan by the City Council, with recommendation from the Planning Commission.

(2) The provision of the designated open space may not occupy property within the development that must be provided to accommodate urban service requirements such as storm water holding ponds or property preserved to meet other state or local requirements such as the provisions of the Wetland Conservation Act, if protected by city easement, unless the area is proposed as an open space accessible to all residents in the development.

(3) *Incentives*: The City Council may allow incentives that modify the requirements of the zoning ordinance in exchange for the creation of additional common open space areas above the five percent requirement. Incentives may include modification of density, hardsurface coverage and floor area ratio requirements. Requests for incentives and proposals for additional common open space must be clearly defined in the application for Preliminary Development Plan.

(4) *Restrictions*. No single-family detached residential lot may be created narrower than 75 feet wide at the front setback. For each single-family detached residential lot proposed less than 80 feet, a lot must be created that is greater than 90 feet. A maximum of five percent of all single-family detached residential lots may be less than 80 feet wide.

(5) The designated open space component of the Development Plan must be maintained on a continual basis by an association, organization or landlord based upon reasonable standards that are prepared by the applicant in a form acceptable to the City Attorney and approved by the City Council prior to the recording of a development agreement with Hennepin County. The City Council may elect to provide maintenance or fee ownership of the undeveloped/natural area if wider community purpose is determined and public access to the facilities is provided.

(H) *Landscaping*. The required landscaping quantities, screening and the like must comply with §§ 152.200 through 152.293 and §§ 152.300 through 152.393.

(I) *Staging of development and improvements:* The following standards apply to Development Plans that will be staged or phased over a number of years:

(1) The developer must submit a plan to the city describing the sequencing of infrastructure improvements that comply with city requirements to safeguard health, safety and welfare of residents, employees and patrons within the development. The developer must submit financial security in a form acceptable to the City Attorney to assure satisfactory completion of all infrastructure improvements as required by the city.

(2) When a Development Plan provides for undeveloped/natural areas that will be staged over a period of years, a proportionate share of open space or recreational acreage must be provided that is equal or greater than the proportionate number of residential units or square footage of non-residential usage or sufficient land escrow security may be provided that bears a proportionate relationship to the total undeveloped/natural area space may be provided to the city in a form acceptable to the City Attorney.

(J) *Infrastructure/utility improvements:* No Development Plan will be approved unless municipal roads, sewer and water facilities are available or will be available to serve the entire property at the time of project completion. All infrastructure improvements including gas, electricity, telephone, telecable and other similar facilities must be placed underground.

(K) *Platting and subdivision of property:* The uniqueness of each Development Plan requires that the general subdivision standards and specifications for design of streets, alleys, easements, blocks, and lots; and other infrastructure improvements may be subject to modification from the respective city ordinances normally governing them. The City Council may approve the design of streets, blocks, lots, public utilities, easements and subdivisions which are not in compliance with the specifications of the subdivision ordinance if the city finds that strict adherence to such specifications is not required to meet the intent of this section or meet the health, safety or welfare requirements of the city. In no event may the following provisions of the city Subdivision Ordinance be waived:

(1) Parkland dedication requirements as provided in § 151.061(B)(1) and (2) of the City Code.

(2) Final Plat approval is withheld until the applicant complies with the provisions of § 151.085 of the City Code pertaining to the required development improvements.

(L) *Parking*: The design, construction and required number of parking stalls within the Planned Unit Development District are subject to the requirements found in §§ 152.140 through 152.149, §§ 152.200 through 152.293 and §§ 152.300 through 152.293.

(M) *Signage*: The placement and design of signage within the Planned Unit Development District are regulated in Chapter 150 of the City Code.

(N) *Legal restrictions and covenants:* The owner(s) or their respective agents may submit restrictions or covenants of the Development Plan in a form acceptable to the City Attorney that assigns maintenance responsibility to all private open space and landscaped areas, and ensures compliance with all aspects of the Development Plan, site and building plan review ordinances, and

conditions of approval.

(O) *Development Plan amendments:* Amendments to an approved Development Plan may be approved by the City Council after review by the Planning Commission. The notification and public hearing procedure for such amendment may be the same as for approval of the original Development Plan. An amendment is any change determined by the City Manager which:

(1) Substantially alters the location of buildings, parking areas, or streets.

(2) Increases the gross floor area of non-residential uses by more than five percent or increases the gross floor area of any individual building by more than ten percent.

(3) Increases the number of floors of any building.

(4) Decreases the amount of open space or alters it to change its original design or intended use.

(5) Creates non-compliance with any special condition attached to the approval of the Development Plan by the city.

(P) *Development Plan contract.* The applicant may enter into a development contract that states the components of the Development Plan and any conditions imposed upon the development by the City Council. The development agreement must be signed by the applicant and the city and recorded with Hennepin County prior to the issuance of any grading or building permits for the property.

(Ord. 2000-936)

VILLAGE ZONING DISTRICT

§ 152.480 PURPOSE.

The Village Zoning District is established to implement the goals and objectives of the Village Redevelopment Plan and to define strategies and design standards for the implementation of the Plan. The district is intended to promote creative and efficient use of land within the Redevelopment District by providing flexibility in design and to allow mixed land uses while encouraging compact and pedestrian oriented development.

(Ord. 2001-947, passed 1-22-01; Am. Ord. 2003-991, passed 3-17-03)

§ 152.481 USES.

All land uses within the district shall conform to the type and location of uses described in the Village Redevelopment Plan. Variations from the type and location of uses may be allowed when approved as part of a Development Plan, provided the intent of the Village Redevelopment Plan is met.

(A) *Permitted Uses.* No uses are permitted by right.

(B) *Conditional Uses.* The following uses are allowed with a conditional use permit.

(1) Residential.

(2) Offices.

(3) Retail and service business.

(4) Public and institutional facilities.

(5) Mixed use developments which include two or more of the above.

(Ord. 2001-947, passed 1-22-01)

§ 152.482 PERFORMANCE STANDARDS.

The design of all sites and buildings within the district shall conform to the design guidelines established in the Village Redevelopment Plan. Variations from the guidelines may be allowed when approved as part of a Development Plan, provided the intent of the Village Redevelopment Plan is met. Specifically the following provisions shall apply to all areas in the district outside of the Market Square area:

(A) Lot area, lot width and yard requirements.

(1) Setbacks for commercial structures.

Front yard: Build-to line (0-10 feet)

Side yard interior: Zero feet minimum

Side yard corner: Same as front

Rear yard: 20 feet

(2) Setbacks for residential structures.

Front yard: As outlined in the Village Master Plan

Side yard interior: Zero feet minimum

Side yard corner: Same as front

Rear yard: 20 feet

(3) Setback for parking.

Front yard: No parking permitted unless approved specific to a site plan

Side yard: Five feet

Side yard corner: Five feet

Rear yard: Five feet unless adjacent to residential then minimum of 20 feet

(4) Front yard build-to line established. In the village district in the front yard, a build-to line is established which provides a minimum and maximum front setback for buildings and other structures, from the right-of-way or property line. The minimum front building setback shall be zero feet and the maximum shall be ten feet.

(5) At least 65% of the street frontage of any lot shall be occupied by building facades meeting the build-to line. Other portions of a building beyond the 65% may be setback farther than required by the build-to line.

(6) There is no minimum lot size for non-residential uses.

(7) Residential parcels shall maintain a lot width that is adequate for the design of the structure. A minimum separation of 15 feet shall be maintained between detached units.

(8) Parking shall not routinely be permitted in the front yard. However, in site specific cases it may be permitted subject to site plan review and parking shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet and a maximum height of four and one half feet above the level of the parking lot, at the build-to line.

(9) Drive-through lanes. Drive-through or drive-in lanes are not allowed within the build-to or in front of any building; they must be located to the side or rear of a building. This does not pertain to driveways providing access to a site.

(B) Building design and materials.

(1) All buildings shall be designed to accomplish the goals and policies of the Comprehensive Plan and the Village Master Plan. Building materials shall be attractive in appearance, durable with a permanent finish, and of a quality that is consistent with the standards and intent of the Master Plan. Where appropriate, buildings shall carry over materials and colors of adjacent buildings, with the exception of prohibited materials.

(2) All building designs shall be subject to the review of an architect to assure compatibility with the intent of the city regulations. The architect shall be selected by the city, with the cost of review charged to the planning escrow submitted by the applicant.

(3) All buildings shall include the following elements:

(a) Accent materials shall be provided and included on all sides of a building and all sides shall be treated the same.

(b) Buildings containing office and retail uses shall maintain 50% transparency from grade to a height of 12 feet on each first floor front that faces a street or public open space (sidewalk or plaza).

(c) Complimentary major material colors.

(d) A combination of vertical and horizontal pattern designs in the building facade.

(C) Any exterior building wall adjacent to or visible from a public street, public open space or abutting property may not exceed 50 feet in length without significant visual relief consisting of one or more of the following:

(1) The facade shall be divided architecturally by means of significantly different materials or textures; or

(2) Horizontal offsets of at least four feet in depth; or

(3) Vertical offsets in the roofline of at least four feet, or fenestration at the first floor level that is recessed horizontally at least one foot into the facade.

(D) Exterior commercial building materials shall be classified as primary, secondary, or accent materials. Primary materials shall cover at least 60% of the facade of a building. Secondary materials may cover no more than 30% of the facade. Accent materials may include door and window frames, lintels, cornices, and other minor elements and may cover no more than 10% of the facade. Allowable materials are as follows:

(1) Primary exterior building materials may be natural or cementious brick or stone, glass or equivalent if approved by the city's architect.

(2) Secondary exterior building materials may be integrally colored decorative block, integrally colored stucco or equivalent if approved by the city's architect.

(3) A water managed Exterior Insulation Finish System (EIFS) may be permitted as a secondary material on upper floors only.

(4) Accent materials may include wood or metal if appropriately integrated into the overall building design and not situated in areas that will be subject to physical or environmental damage.

(5) All materials shall be integrally colored.

(6) Sheet metal, corrugated metal, plain flat concrete block (whether painted or integrally colored) are prohibited materials unless they are approved on a specific design as accent materials.

(7) Lighting may be used to accent the building and site and shall be identified at the time of site plan review.

(E) All residential developments are subject to the design criteria as outlined in the Village Master Plan and require site plan review. Each submittal shall include architectural renderings for proposed structures that include a variety of colors and materials. In addition, all residential developments shall conform to the following performance standards:

(1) Each unit shall include an attached garage that is a minimum of 480 square feet in size unless a smaller size is appropriate for the unit design. The specific size is subject to the approval of the city as part of the site plan review. The garage shall be incorporated into the design of the structure and may not extend further towards the public street then the front of the house.

(2) At least 30% of the front exterior building finish must consist of brick, stone, or an equivalent material if approved by the city's architect.

(F) Trash handling and screening.

(1) All trash, recyclable materials, equipment for handling them, including compactors, shall be totally screened from eye level view from public streets and adjacent properties, and shall be located to the side or rear of the building. This may be accomplished by locating within the principal building, or stored within an accessory building constructed of the same materials and colors and attached to the principal building.

(2) Loading docks: Loading docks shall not be located in the front yard and shall be completely screened from eye-level view of public streets and public open spaces, by means of landscaping which is at least 80% opaque year round within two years, or by a screen wall of the same materials and colors as the principal building.

(3) All mechanical equipment, whether roof-top or located on the ground shall be completely screened from the ground-level view of adjacent properties and public streets, or designed to be compatible with the architectural treatment of the principal building.

(G) Landscaping.

(1) All areas not occupied by buildings, parkways, driveways, sidewalks, or other hard surface shall be sodded or mulched and landscaped with approved ground cover, flowers, shrubbery and trees and shall be irrigated.

(2) At least 10% of the total land area within the perimeter of parking and driveway areas shall be landscaped.

(3) Parking lot islands and medians shall be a minimum of six feet wide.

(4) Overstory trees shall be provided along all parking lot perimeters and medians at a minimum of 20 feet on center.

(5) A landscape plan shall be created for each site and shall include a full complement of overstory, ornamental, and evergreen trees, shrubbery, and ground covers that are hardy and appropriate for the locations in which they are planted, and which provide year-round color and interest.

(6) The acceptable planting materials are outlined in the Village Master Plan. Other materials may be approved at the discretion of the city.

(H) Signage/awnings. Each building proposed for development shall submit a comprehensive sign plan that addresses the size, location, and number of signs proposed. The submission of a comprehensive sign plan supersedes the city sign ordinance as may be applied in other zoning districts because of the unique nature of the Village District.

(1) Wall signs shall be located in a designated area located between 12 feet and 16 feet above grade.

(2) Attached wall signage shall consist of individual letters or script logos mounted on the building.

(3) Box signs or cabinet signs, whether on a wall, projecting or on canopies shall only be allowed for logo signs as approved as part of the overall signage plan.

(4) Wall signs shall be flat, projecting a maximum of six inches.

(5) Any illumination of signs shall be done in a manner to complement the type of sign proposed. Lighting shall be accomplished in such a manner as to prevent glare.

(6) Freestanding signs shall be limited to monument style signs on a solid base that are a maximum of ten feet in height and 100 square feet in area, including the sign base.

(7) Awnings shall not extend more than 5 feet from the building facade and they shall not be backlit.

(Ord. 2001-947, passed 1-22-01; Am. Ord. 2003-991, passed 3-17-03)

§ 152.483 SUBMITTAL REQUIREMENTS AND REVIEW PROCEDURES.

All properties proposed for redevelopment in the district shall conform to the submittal requirements and review procedures established in the Planned Development Overlay District (§§ 152.562 and 152.563).

(Ord. 2001-947, passed 1-22-01)

§ 152.484 MODIFICATION OR AMENDMENTS.

Modifications or amendments of a Development Plan shall conform to requirements of § 152.565.

(Ord. 2001-947, passed 1-22-01)

§ 152.485 GENERAL REQUIREMENTS.

The requirements of § 152.564 shall apply to all land within the district.

(Ord. 2001-947, passed 1-22-01)

§ 152.486 REVOCATION OF DEVELOPMENT PLAN.

Revocation of the Development Plan shall follow the process established in § 152.566.

(Ord. 2001-947, passed 1-22-01)

SPECIAL ZONING OVERLAYS

SPECIAL OVERLAY DISTRICTS

§ 152.490 PURPOSE.

This subchapter of the chapter defines and establishes the overlay districts within the city. The following overlays are hereby established within the City of Brooklyn Park.

(Ord. 2000-936)

§ 152.491 FLOOD HAZARD OVERLAY.

The legislature of the State of Minnesota has, in M.S. Ch. 103F and 462 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. The intent of the designation on a property is to protect and preserve areas and investments on properties that are subject to periodic inundation by flood waters. This designation includes Floodway (FW), Flood Fringe (FF) and General Flood Plain (FP). The Official Zoning Map together with all materials attached thereto is hereby adopted by reference and declared to be part of this chapter. The attached material includes the Flood Insurance Study for Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016 and the Flood Insurance Rate Map panels enumerated as follows: 27053C0069F, 27053C0088F, 27053C0089F, 27053C0093F, 27053C0182F, 27053C0184F, 27053C0201F, 27053C0202F, 27053C0203F, 27053C0204F, 27053C0206F, 27053C0207F, 27053C0208F, 27053C0209F, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the office of the City Clerk.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.492 MISSISSIPPI RIVER CRITICAL AREA OVERLAY (CA).

The intent of this designation is to protect and preserve the Mississippi River corridor as a unique and valuable natural resource for the city, region, state and nation. The boundaries of this overlay were determined by the State of Minnesota in Executive Order No. 79-19 and are not under the jurisdiction of the City of Brooklyn Park to alter. Areas with Critical Area designation must be maintained largely for low-density residential and park uses. Where development or redevelopment occurs, site alteration and building construction may not disturb the natural state of shoreline, slopes, and bluff and must not be readily visible from the river.

(Ord. 2000-936)

§ 152.493 HIGHWAY OVERLAY (H).

The intent of this designation is to encourage development along designated highway corridors that enhance the tax base of the community and are superior in quality and design than elsewhere in the city. Amendments to the boundaries of this overlay may be approved at the discretion of the City Council through the rezoning process outlined elsewhere in this chapter.

(Ord. 2000-936)

§ 152.494 PLANNED DEVELOPMENT (PD) OVERLAY.

The intent of this designation is to encourage development that is superior in quality and design than could be achieved through traditional zoning. The boundaries of this overlay are amended for each application as approved through on the Development Plan through the rezoning process outlined elsewhere in this chapter.

(Ord. 2000-936)

FLOOD HAZARD AREA OVERLAY

§ 152.510 PURPOSE.

The purpose of these overlays includes:

(A) To protect areas with environmental sensitivity.

(B) To promote the public health, safety, and general welfare of the city.

(C) To minimize losses of life, property, health and safety hazards, disruption of commerce and governmental services, public expenditures for flood protection and relief, and impairment of the tax base due to periodic inundation.

(D) To comply with the rules and regulations of the National Flood Insurance Program codified as 44 CFR Parts 59-78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

(E) To preserve the natural characteristics and functions of watercourses and flood plains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.511 GENERAL PROVISIONS.

(A) This subchapter adopts the flood plain maps applicable to the city and includes three flood plain districts: Floodway, Flood Fringe, and General Flood Plain.

(1) Where Floodway and Flood Fringe districts are delineated on the flood plain maps, the standards in § 152.513(C) or (D) will apply, depending on the location of a property.

(2) Locations where Floodway and Flood Fringe districts are not delineated on the flood plain maps are considered to fall within the General Flood Plain District. Within the General Flood Plain District, the Floodway District standards in § 152.513(C) apply unless the floodway boundary is determined, according to the process outlined in § 152.513(E). Once the floodway boundary is determined, the Flood Fringe District standards in § 152.513(D) may apply outside the floodway.

(B) *Lands to which subchapter applies.* This subchapter applies to all lands within the jurisdiction of the city shown on the official zoning map or the attachments to the map as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

(1) The Floodway, Flood Fringe and General Flood Plain Districts are overlay districts that are superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this subchapter. In case of a conflict, the more restrictive standards will apply.

(C) *Interpretation.* The boundaries of the zoning districts are determined by scaling distances on the Flood Insurance Rate Map.

(1) Where a conflict exists between the flood plain limits illustrated on the official zoning map and actual field conditions, the flood elevations shall be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory flood plain, and other available technical data.

(2) Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Planning Commission and to submit technical evidence.

(D) *Abrogation and greater restrictions.* It is not intended by this subchapter to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. However, where this subchapter imposes greater restrictions, the provisions of this

subchapter prevail. All other ordinances inconsistent with this subchapter are hereby repealed to the extent of the inconsistency only.

(E) This subchapter does not imply that areas outside a flood hazard area will be free from flooding or flood damages. This subchapter does not create liability on the part of the city or any officer or employee for any flood damages that result from reliance on this section or any administrative decision lawfully made based on regulations in this section.

(F) *Severability*. If any section, clause, provision, or portion of this subchapter is adjudged unconstitutional or invalid by a court of law, the remainder of this subchapter shall not be affected and shall remain in full force.

(G) *Annexations*. The Flood Insurance Rate Map panels adopted by reference into § 152.491 above may include flood plain areas that lie outside of the corporate boundaries of the city at the time of adoption of this subchapter. If any of these flood plain land areas are annexed into the city after the date of adoption of this subchapter, the newly annexed flood plain lands will be subject to the provisions of this subchapter immediately upon the date of annexation.

(H) *Detachments*. The Flood Insurance Rate Map panels adopted by reference into § 152.491 will include flood plain areas that lie inside the city at the time of adoption of this subchapter. If any of these flood plain land areas are detached from the city and come under the jurisdiction of another city after the date of adoption of this subchapter, the newly detached flood plain lands will no longer be subject to the provisions of this subchapter as of the date of detachment.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.512 AMENDMENTS AND ADMINISTRATION.

All amendments to this subchapter must follow the procedures as defined in 152.030 through 152.039.

(A) Designations shown on the Zoning Overlay Map may not be removed unless an applicant provides evidence 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 flood hazard area. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources determined that, through other measures, lands are adequately protected for the intended use.

(B) All amendments, either to the text of this section or the Zoning Overlay Map must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the boundaries for flood hazard area 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 ten days written notice of all hearings to consider an amendment to this section and said notice must include a draft of the amendment or technical study under consideration.

(C) *Zoning Administrator*: A Zoning Administrator or other official designated by the city shall administer and enforce this chapter. If the Zoning Administrator finds a violation of the provisions of this chapter the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in § 152.522.

(D) *Permit requirements*:

(1) *Permit required*. For that portion of the property or structures in the floodplain, a permit issued by the Zoning Administrator in conformity with the provisions of this subchapter shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair over $500), 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; relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for; any other type of development as defined in this subchapter. Exceptions to this requirement include dog houses, non-habitable structures such as storage units less than 36 square fee in size, normal household storage, such as lawn furniture or equipment storage, such as a canoe, all of which may easily be moved if necessary and normal landscaping and maintenance, provided no fill is placed within the Flood Hazard Overlay.

(2) *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 M.S. 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).

(3) *Notification to FEMA when physical changes increase or decrease the 100-year flood elevation.* As soon as is practicable, but not later than six 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.

(E) The flood plain district regulations adopted by this subchapter will be amended to incorporate any revisions by the Federal Emergency Management Agency to the flood plain maps adopted by § 152.491.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.513 FLOODWAY, FLOOD FRINGE AND GENERAL FLOOD PLAIN PERFORMANCE STANDARDS AND USES.

(A) *Districts.*

(1) *Floodway District.* The Floodway District includes those areas within Zones AE that have a floodway delineated as shown on the Flood Insurance Rate Map adopted in § 152.491. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, the Floodway District also includes those areas that are at or below the ordinary high water level as defined in M.S. § 103G.005, Subd. 14.

(2) *Flood Fringe District.* The Flood Fringe District includes areas within Zones AE that have a floodway delineated on the Flood Insurance Rate Map adopted in § 152.491, but are located outside of the floodway. For lakes, wetlands and other basins within Zones AE that do not have a floodway delineated, the Flood Fringe District also includes those areas below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in M.S. § 103G.005, Subd. 14.

(3) *General Flood Plain District.* The General Flood Plain District includes those areas within Zones A, AE, or AH that do not have a delineated floodway as shown on the Flood Insurance Rate Map adopted in § 152.491.

(B) *Applicability.* Within the Flood Plain Districts established in this subchapter, the use, size, type and location of development must comply with the terms of this subchapter and other applicable regulations. In no cases shall flood plain development adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributaries to the main stream, drainage ditches, or any other drainage facilities or systems. All uses not listed as permitted uses or conditional uses in divisions (C), (D) and (E) below are prohibited. In addition, critical facilities, as defined in § 152.008, are prohibited in all Flood Plain Districts.

(C) *Floodway District (FW).*

(1) *Permitted uses.* The following uses, subject to the standards set forth in division (C)(2) below and § 152.514, are permitted uses if otherwise allowed in the underlying zoning district or any applicable overlay district:

(a) General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

(b) Industrial-commercial loading areas, parking areas, and airport landing strips.

(c) Open space uses, including but not limited to private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, hunting and fishing areas, and single or multiple purpose recreational trails.

(d) Residential lawns, gardens, parking areas, and play areas.

(e) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources Area Hydrologist is notified at least ten days prior to issuance of any permit.

(2) *Standards for Floodway permitted uses.*

(a) The use must have a low flood damage potential.

(b) The use must not obstruct flood flows or cause any increase in flood elevations and must not involve structures, obstructions, or storage of materials or equipment.

(c) Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(d) No on-site sewage treatment, holding tanks or water supply systems are permitted in the floodway.

(3) *Conditional uses.* The following uses may be allowed as conditional uses following the standards and procedures set forth in § 152.519 and further subject to the standards set forth in division (C)(4) below, if otherwise allowed in the underlying zoning district or any applicable overlay district.

(a) Structures accessory to the uses listed in divisions (C)(1)(a) through (c) and the uses listed in divisions (C)(3)(b) and (c).

(b) Extraction and storage of sand, gravel, and other materials.

(c) Marinas, boat rentals, docks, piers, wharves, and water control structures.

(d) Storage yards for equipment, machinery, or materials.

(e) Placement of fill or construction of fences that obstruct flood flows. Farm fences, as defined in § 152.008, are permitted uses as it relates to this section.

(f) Travel-ready recreational vehicles meeting the exception standards in § 152.514(F)(2).

(g) Levees or dikes intended to protect agricultural crops for a frequency flood event equal to or less than the ten-year frequency flood event.

(4) *Standards for Floodway conditional uses.*

(a) *All uses.* A conditional use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected.

(b) Fill; 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. Fill, dredge spoil, and other similar materials deposited or stored in the flood plain must be protected from erosion by vegetative cover, mulching, riprap or other acceptable method. Permanent sand and gravel operations and similar uses must be covered by a long-term site development plan.

3. Temporary placement of fill, other materials, or equipment which would cause an increase to the stage of the 1% chance or regional flood may only be allowed if the City Council has approved a plan that ensures removal of the materials from the floodway based upon the flood warning time available.

(c) *Accessory structures.* Accessory structures, as identified in division (C)(3)(a) above, may be permitted, provided that:

1. Structures are not intended for human habitation;

2. Structures will have a low flood damage potential;

3. Structures will be constructed and placed so as to offer a minimal obstruction to the flow of flood waters;

4. Service utilities, such as electrical and heating equipment, within these structures must be elevated to or above the regulatory flood protection elevation or properly floodproofed;

5. Structures must be elevated on fill or structurally dry floodproofed in accordance with the FP1 or FP2 floodproofing classifications in the State Building Code. All floodproofed structures must be adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls.

6. As an alternative, an accessory structure may be internally wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment and does not exceed 576 square feet in size. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria: to allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and 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.

(d) Structural works for flood control that will change the course, current or cross section of protected wetlands or public

waters are subject to the provisions of M.S. § 103G.245.

(e) A levee, dike or floodwall constructed in the floodway must not cause an increase to the 1% chance or regional flood. The technical analysis must assume equal conveyance or storage loss on both sides of a stream.

(f) Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system.

(D) *Flood Fringe District (FF).*

(1) *Permitted uses.* Permitted uses are those uses of land or structures allowed in the underlying zoning district(s) that comply with the standards in division (D)(2) below. If no pre-existing, underlying zoning districts exist, then any residential or nonresidential structure or use of a structure or land is a permitted use provided it does not constitute a public nuisance.

(2) *Standards for Flood Fringe permitted uses.*

(a) Except for the structures mentioned in § 152.514(D), only non-habitable accessory structures constructed with less than 120 square feet, fences, or docks for the personal use of the resident(s) of the principal structure that are constructed with flood resistant material to the regulatory flood protection elevation in accordance with the flood proofing classification of the State Building Code may be permitted in the flood fringe, if permitted in the underlying district. No accessory structure may be constructed on the property that will increase flood elevations. All structures, including accessory structures, must be elevated on fill so that the lowest floor, as defined, is at or above the regulatory flood protection elevation. The finished fill elevation for structures must be no lower than one foot below the regulatory flood protection elevation and the fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure.

(b) *Accessory structures.* As an alternative to the fill requirements of division (D)(2)(a) above, structures accessory to the uses identified in division (D)(1) above may be permitted to be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code, provided that:

1. The accessory structure constitutes a minimal investment, does not exceed 576 square feet in size, and is only used for parking and storage.

2. All portions of floodproofed accessory structures below the regulatory flood protection elevation must be:

a. Adequately anchored to prevent flotation, collapse or lateral movement and designed to equalize hydrostatic flood forces on exterior walls;

b. Be constructed with materials resistant to flood damage; and

c. Must have all service utilities be water-tight or elevated to above the regulatory flood protection elevation.

3. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following criteria: to allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and 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.

(c) The cumulative placement of fill or similar material on a parcel must not exceed 1,000 cubic yards, unless the fill is specifically intended to elevate a structure in accordance with division (D)(2)(a) above, or if allowed as a conditional use under division (D)(3)(c) below.

(d) The storage of any materials or equipment must be elevated on fill to the regulatory flood protection elevation.

(e) All service utilities, including ductwork, must be elevated or water-tight to prevent infiltration of floodwaters.

(f) 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.

(g) All fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

(h) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, or must have a flood warning or emergency evacuation plan acceptable to the City Council.

(i) Accessory uses such as yards, railroad tracks, and parking lots may be at an elevation lower than the regulatory flood protection elevation. However, any facilities used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

(j) Interference with normal manufacturing/industrial plant operations must be minimized, especially along streams having protracted flood durations. In considering permit applications, due consideration must be given to the needs of industries with operations that require a flood plain location.

(k) Manufactured homes must meet the standards of § 152.514 (E) and recreational vehicles must meet the standards of § 152.514(F).

(3) *Conditional uses.* The following uses and activities may be allowed as conditional uses, if allowed in the underlying zoning district(s) or any applicable overlay district, following the procedures in § 152.519.

(a) Any structure that is not elevated on fill or floodproofed in accordance with division (D)(2) (a) and (b) above.

(b) Storage of any material or equipment below the regulatory flood protection elevation.

(c) The cumulative placement of more than 1,000 cubic yards of fill when the fill is not being used to elevate a structure in accordance with division (D)(2)(a) above.

(4) *Standards for Flood Fringe conditional uses.*

(a) The standards listed in divisions (D)(2)(c) through (j) apply to all conditional uses.

(b) Basements, as defined by § 152.008, are subject to the following:

1. Residential basement construction is not 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 floodproofed in accordance with division (D)(4)(c) below.

(c) All areas of nonresidential structures, including basements, to be placed below the regulatory flood protection elevation must be floodproofed in accordance with the structurally dry floodproofing classifications in the State Building Code. Structurally dry floodproofing must meet the FP1 or FP2 floodproofing classification in the State Building Code, which requires making the structure watertight with the walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(d) The placement of more than 1,000 cubic yards of fill or other similar material on a parcel (other than for the purpose of elevating a structure to the regulatory flood protection elevation) must comply with an approved erosion/sedimentation control plan.

1. The plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the regional (1% chance) flood event.

2. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the City Council.

3. 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 below the regulatory flood protection elevation must comply with an approved emergency plan providing for removal of such materials within the time available after a flood warning.

(E) *General Flood Plain District (GF).*

(1) *Permitted uses.*

(a) The uses listed in division (C)(1) above, Floodway District permitted uses, are permitted uses.

(b) All other uses are subject to the floodway/flood fringe evaluation criteria specified in division (E)(2) below. Division (C) above applies if the proposed use is determined to be in the Floodway District. Division (D) above applies if the proposed use is determined to be in the Flood Fringe District.

(2) *Procedures for Floodway and Flood Fringe determinations.*

(a) Upon receipt of an application for a permit or other approval within the General Flood Plain District, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.

(b) If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in division (E)(2)(c) below.

(c) The determination of floodway and flood fringe must include the following components, as applicable:

1. Estimate the peak discharge of the regional (1% chance) 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 one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries.

(d) The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.

(e) After the Floodway and Flood Fringe District boundaries have been determined, the Zoning Administrator must process the permit application consistent with the applicable provisions of divisions (C) and (D) above.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.514 STANDARDS FOR ALL FLOOD PLAIN DISTRICTS.

(A) *Public utilities.* All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain must be floodproofed in accordance with the State Building Code or elevated to the regulatory flood protection elevation.

(B) *Public transportation facilities.* Railroad tracks, roads, and bridges to be located within the flood plain must comply with § 152.513(C) and (D). These transportation facilities must be elevated to the regulatory flood protection elevation where failure or interruption of these facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. None of these uses shall increase flood elevations.

(C) Non-habitable park shelters and other community assembly structures when accessory to park uses shall be permitted, but shall be constructed using flood proofing measures to the regulatory flood protection elevation, in accordance with the State Building Code, and shall not increase flood elevations. Buildings over 500 square feet must be dry flood proofed to the flood proofing standards in the State Building Code.

(D) *On-site water supply and sewage treatment 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 are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; 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, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

(E) *Manufactured homes.* New manufactured home parks and expansions to existing manufactured home parks are prohibited in any Flood Plain District. For existing manufactured home parks or lots of record, the following requirements apply:

(1) Placement or replacement of manufactured home units is prohibited in the Floodway District.

(2) If allowed in the Flood Fringe District, placement or replacement of manufactured home units is subject to the requirements of § 152.513(D) and the following standards:

(a) New and replacement manufactured homes must be elevated in compliance with § 152.513(D) and must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

(b) New or replacement manufactured homes in existing manufactured home parks must meet the vehicular access requirements for subdivisions in § 152.517(B).

(F) *Recreational vehicles.* New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any Flood Plain District. Storage of recreational vehicles and equipment shall be in conformance with the regulations of the city, less than 400 square feet in size and equipment may be temporarily stored (for a maximum period of 180 days) if permitted in the underlying district and in compliance with all other sections of the City Code. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds or as storage in the flood plain must meet the exemption criteria below or be treated as new structures meeting the requirements of this subchapter.

(1) Recreational vehicles are exempt from the provisions of this subchapter if they are placed in any of the following areas and meet the criteria listed in division (F)(2) below:

(a) Individual lots or parcels of record.

(b) Existing commercial recreational vehicle parks or campgrounds.

(c) Existing condominium-type associations.

(2) Criteria for exempt recreational vehicles:

(a) The vehicle must have a current license required for highway use.

(b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks.

(c) No permanent structural type additions may be attached to the vehicle.

(d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district.

(e) Accessory structures are not permitted within the Floodway District. Any accessory structure in the Flood Fringe District must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in division (E)(2) above.

(f) An accessory structure must constitute only a minimal investment.

(3) Recreational vehicles that are exempt in (F)(2) above lose this exemption when development occurs on the site that exceeds a minimal investment for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as new structures subject to the elevation and floodproofing requirements of § 152.513(D). No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle should flooding occur.

(G) *Building sites.* If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

(1) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Constructed with materials and utility equipment resistant to flood damage;

(3) Constructed by methods and practices that minimize flood damage; and

(4) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.515 PROCEDURESFOR SUBMISSION OF TECHNICAL DATA FOR BOUNDARY DETERMINATION.

(A) Upon receipt of an application for a development for a use within a Flood Hazard Overlay, the applicant is required to furnish as is applicable to the application as determined by the City Manager for the determination of the regulatory flood protection elevation and whether the proposed use is within the flood way or flood fringe. If the proposed use is located within the flood way, § 152.513 of this chapter applies. If the proposed use is located in the flood fringe, § 152.514 of this chapter applies.

(1) A typical valley cross-section 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 the following:

(a) Elevations or contours of the ground.

(b) Pertinent structure, fill, or storage elevations.

(c) The size, location, and spatial arrangement of all proposed and existing structures on the site.

(d) Location and spatial arrangement of all proposed and existing structures on the site.

(e) The location and elevations of streets.

(f) Photographs showing existing land uses and vegetation upstream and downstream.

(g) The soil type(s).

(3) 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 must be responsible to submit a 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 flood way or flood fringe and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Rules parts 6120.5000 - 6120.6200 must 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 must:

(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 and providing compensation storage volumes on a 1:1 basis below the 100-year flood elevation. An equal degree of encroachment on both sides of a stream within the reach must be assumed in computing floodway boundaries.

(C) The City Manager must present the technical evaluation and findings of the designated engineer or expert to the Board of Adjustment and Appeals. The board may formally accept the technical evaluation and the recommended floodway and flood fringe delineations for the Flood Hazard Overlay Area or deny the permit. The Board, prior to official action, must submit the application and all supporting data and analyses to the Federal Emergency Management Agency and Department of Natural Resources for review and comment. Once the flood way and flood fringe boundaries have been determined, the Board will refer the matter back to the City Manager who will process the permit application consistent with the applicable provisions of §§ 152.030 through 152.039 of this chapter.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05)

§ 152.516 PROCEDURESFOR SUBMISSION OF TECHNICAL DATA FOR ALL DEVELOPMENT WITHIN A FLOOD HAZARD OVERLAY.

In addition to the requirements of §§ 152.030 through 152.039, the following additional requirements apply to an application for development within all Flood Hazard Overlays.

(A) Upon receipt of an application for a development for a use within a Flood Hazard Overlay, the applicant is required to furnish

the following as is applicable to the application as determined by the City Manager for the determination of the flood hazard area boundary and the adequacy of the proposed use for the particular site:

(1) Plans drawn to scale showing the following information:

(a) The nature, location, dimensions, and elevation of the lot.

(b) The existing or proposed structures, fill, or storage of materials.

(c) Flood-proofing measures, and the relationship of the above to the location of the stream channel.

(d) The relationship of the above to the location of the stream channel.

(2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.

(3) The applicant is required to submit certification by a registered engineer or surveyor licensed by the State of Minnesota that the floodproofing, finished fill and building elevations were accomplished in compliance with the provisions of this section.

(B) One copy of the plans and specifications defined above must be given 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. Based upon the technical evaluation of the designated engineer or expert, the City Manager shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

(C) *Review standards*. In addition to the review standards listed in §§ 152.030 through 152.039. The City Council must also consider the following in its review of any application in the Flood Hazard Overlay. These standards include:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachment.

(2) 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.

(3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(5) The importance of the services provided by the proposed facility to the community.

(6) The requirements of the facility for a waterfront location.

(7) The availability of alternative locations not subject to flooding for the proposed use.

(8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(9) The relationship of the proposed use to the comprehensive plan and flood plain management programs for the area.

(10) The safety of access to the property in times of flood for ordinance and emergency vehicles.

(11) The expected heights, velocity, duration rate of rise, and sediment transport of the flood waters expected at the site.

(12) Such other factors which are relevant to the purposes of this chapter.

(D) *Reasonable conditions*. The City Council shall attach any reasonable conditions as it deems necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:

(1) Modification of waste treatment and water supply facilities.

(2) Limitations on period of use, occupancy or operation.

(3) Imposition of operational controls, sureties, and deed restrictions.

(4) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.

(5) Flood proofing measures, in accordance with the State Building Code and this chapter. The applicant must submit a plan or

documentation 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.

(E) *State and federal permits*. Prior to granting approval for any application for development, the City Manager shall determine that the applicant has obtained all necessary state and federal permits.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05)

§ 152.517 SUBDIVISION REVIEW CRITERIA.

(A) *In general.* Recognizing that flood prone areas may exist outside of the designated Flood Plain Districts, the requirements of this section apply to all land within the city.

(B) No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions for purposes of this subchapter. All lots within Flood Plain Districts shall be able to contain a building site outside of the Flood Plain Districts. All subdivisions must have water and sewage treatment facilities that comply with the provisions of this chapter 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 must be clearly labeled on all required elevations of all access roads and must be clearly labeled on all required subdivision drawings and platting documents.

(C) In the General Flood Plain Overlay, applicants must provide the information required in § 152.515 of this chapter to determine the 100-year flood elevation, the floodway and flood fringe district boundaries and the regulatory flood protection elevation for the subdivision site.

(D) *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.

(E) If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:

(1) All such proposals are consistent with the need to minimize flood damage within the flood prone area,

(2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and

(3) Adequate drainage is provided to reduce exposure of flood hazard.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.518 CONDITIONS FOR A VARIANCE TO THE FLOOD HAZARD OVERLAY PERFORMANCE STANDARDS.

(A) Applications for variance will be reviewed in accordance with the procedures in §§ 152.030 through 152.039.

(B) Any projects granted a variance to high water mark must submit an Erosion and Sedimentation Control Plan prepared by a Registered Engineer licensed by the State of Minnesota in accordance with the guidelines of the West Mississippi Watershed District. This plan must be approved by the city prior to issuance of a permit.

(C) Proposals for variance must be the minimum necessary to allow for the reasonable use of the property.

(D) Proposals must meet the requirements defined in § 152.516 for development in the Flood Hazard Overlay.

(E) All habitable structures applying for a variance and proposed in the Flood Hazard Overlay must be constructed in accordance with the flood plain management standards for the State of Minnesota as found in Minnesota Rules parts 6120.5000 - 6120.6200 and the Code of Federal Regulations, 44 CFR 60.3(a)-(d).

(F) 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.

(G) The City Manager must submit hearing notices for proposed variances to the DNR sufficiently in advance to provide at least ten days notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(H) *Required notification*. The City Manager must notify the applicant for a variance of the impacts of the action and must maintain a record of such notification. The city must 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. The impacts necessitating notification include:

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance.

(2) Such construction below the 100-year or regional flood level increases risks to life and property.

(I) Submittal of final decisions to the DNR. A copy of all decisions granting variances must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(J) 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:

(a) A showing of good and sufficient cause,

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and

(c) 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.

(K) All new principal structures must have vehicular access at or above an elevation not more than two 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.

(L) Record-keeping. The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.519 APPROVAL OF SITE PLAN REVIEW, CONDITIONAL USE PERMITS, AND/OR GRADING PERMITS.

(A) The City Council may attach conditions to the approval of Site Plan Review or any permits on flood hazard overlay properties including, but not limited to, the modification of the waste disposal and water supply facilities; limiting the period of use, occupancy, and/or operation; imposing operational controls, sureties, and deed restriction requirements; aesthetic considerations to protect wetlands, open space or those amenities, and requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures; floodproofing measures, in accordance with the State Building Code and this subchapter. The applicant must submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

(B) In passing upon conditional use applications governed by this subchapter, the City Council must consider all relevant factors specified in other sections of this subchapter, and those factors identified in § 152.516(C).

(C) The Zoning Administrator must submit hearing notices for proposed conditional uses to the DNR sufficiently in advance to provide at least ten days notice of the hearing. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(D) Submittal of final decisions to the DNR. A copy of all decisions granting conditional uses must be forwarded to the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

(Ord. 2000-936; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.520 NON-CONFORMITIES.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to §§ 152.050 through 152.055 and the following:

(A) A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its flood damage potential or degree of obstruction to flood flows except as otherwise provided in division (B) below. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.

(B) 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 flood plain management standards for the State of Minnesota as found in Minnesota Rules parts 6120.5000 - 5120.6200 and the Code of Federal Regulations, 44 CFR 60.3(a)-(d).

(C) The cost of any structural alterations or additions to any non-conforming structure over the life of the structure must not exceed 50% of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alternations and additions constructed since the adoption of the city's initial flood plain controls shall be calculated into today's current cost which will include all costs such as construction material and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50% of the current market value of the structure, then the structure must be located outside the floodway and meet the floodplain management standards for the State of Minnesota as found in Minnesota Rules parts 6120.5000 - 5120.6200 and the Code of Federal Regulations, 44 CFR 60.3(a)-(d).

(D) If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this subchapter. The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses that have been discontinued for a period of 12 months.

(E) If any nonconforming use or structure is substantially damaged, as defined in § 152.008, it shall not be reconstructed except in conformity with the flood plain management standards for the State of Minnesota as found in Minnesota Rules parts 6120.5000 - 5120.6200 and the Code of Federal Regulations, 44 CFR 60.3(a)-(d).

(F) If a substantial improvement occurs, as defined in § 152.008, 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 (as required by division (B) above) and the existing nonconforming building must meet the flood plain management standards for the State of Minnesota as found in Minnesota Rules parts 6120.5000 - 5120.6200 and the Code of Federal Regulations, 44 CFR 60.3(a)-(d).

(G) If any nonconforming use or structure experiences a repetitive loss, it must not be reconstructed except in conformity with the provisions of this subchapter

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05; Am. Ord. 2016-1209, passed 10-10-16)

§ 152.521 RECORD OF FIRST FLOOR ELEVATION.

The City Manager must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the Flood Hazard Overlay. The City Manager must also maintain a record of the elevation to which structures or alterations and additions to structures are flood-proofed.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05)

§ 152.522 ENFORCEMENT AND PENALTIES.

In addition to the enforcement and penalties defined in §§ 152.020 through 152.023, other action may be taken by the city to ensure compliance with this section, including a request to the National Flood Insurance Program to deny flood insurance availability to the subject property. If the structure and/or use suspected to be in violation of this section is in the process of construction, the City Manager must immediately order the construction or development halted until the proper permit or approval is granted. The City Manager will also notify the landowner to restore the land to the condition which existed prior to the violation. Each day a violation exists shall be treated as a separate offense.

(Ord. 2000-936; Am. Ord. 2005-1033, passed 2-7-05)

MISSISSIPPI RIVER CRITICAL AREA

§ 152.530 MISSISSIPPI RIVER CORRIDOR DEVELOPMENT STANDARDS.

(A) *Setbacks.* Front, side and rear setbacks are determined by the underlying zoning district of the subject property, with the following requirements for bluff, slopes over 12% and ordinary high water level setbacks:

(1) Undeveloped Properties.

(a) *Ordinary high water level.* All buildings shall be placed at least 100 feet from the ordinary high water level of the Mississippi River.

(b) *Bluff.* All buildings, decks or other appurtenances shall be set back 40 feet from the edge of a bluff with slopes 12% or greater.

(2) Properties upon which a principal structure was constructed prior to March 26, 2001.

(a) The foundation footprint of an existing principal structure, or of a new principal structure constructed to replace a principal structure that has been damaged, destroyed or removed from the property, may be expanded and/or reconstructed in any direction that does not encroach further toward bluffs or the river and complies with § 152.222.

(b) Existing attached garages, detached accessory structures, decks, patios, three-season porches and other residential structures may be rebuilt or expanded or reconstructed provided that they do not encroach further toward bluffs or the river and comply with § 152.222.

(c) Attached garages, detached accessory structures, decks, patios, three-season porches and other residential structures that are damaged, destroyed or removed from the property may be reconstructed in the same location as previously existed and may be expanded in any direction that do not encroach further toward bluffs and/or the river and comply with § 152.222.

(Ord. 2001-951, passed 3-26-01)

HIGHWAY OVERLAY

§ 152.540 PURPOSE.

The purpose of the overlay is to allow development to occur that is compatible with the primary zoning district and additionally regulate uses and performance standards as deemed in the public interest and to accomplish the following goals:

(A) To produce development and an environment that is superior in quality and design than would be achieved in the primary zoning district.

(B) To protect and enhance private property values.

(C) To allow for the planning and construction of unified developments and environments that may be phased over time and share common elements such as a site and landscape design, complementary architectural schemes, a roadway network, and open space and/or recreational amenities.

(D) To promote master planned developments to increase the efficiency of infrastructure design.

(E) To implement the land use goals of the Comprehensive Plan.

(Ord. 2000-936)

§ 152.541 APPLICABILITY.

(A) All provisions of the Zoning Code may apply to properties in the overlay, however, in any instance where the provisions of the overlay zoning conflict with the provisions of a primary zoning district, the more restrictive provisions take precedence and govern.

(B) Wherever a reference to increased standards due to visibility or proximity to a public right-of-way is made, the requirements may also apply to those planned or future right(s)-of way as shown in the city's or county's Comprehensive or Transportation Plans.

(Ord. 2000-936)

§ 152.542 SUBMITTAL REQUIREMENTS AND REVIEW PROCEDURES.

Applicants must submit a Development Plan for the entire property proposed for development. Approval of a development plan may be subject to the procedures for submittal, notification and public hearing established by city policy and M.S. § 15.99 except as modified in this section. No final approvals may be granted by the city to a Development Plan until all necessary approvals for an Environmental Impact Statement, Environmental Assessment Worksheet, Indirect Source Permit or a Comprehensive Plan amendment have been granted. An approved site plan is required before a building permit will be issued. The site plan may be reviewed and approved by the City Council. The City Council may attach such conditions to their actions as they determine necessary or convenient to better accomplish the purposes of this section. The City Council may base its actions regarding approval of a Development Plan on consideration of the following items:

(A) Compatibility of the proposed development plan with the Comprehensive Plan and this chapter;

(B) Effect of the proposed plans on the neighborhood in which it is to be located, including traffic, noise, glare, setbacks, buffers, and environmental impacts;

(C) Internal organization and adequacy of various uses or densities, circulation and parking facilities, urban services, recreation areas, open spaces, screening and landscaping;

(D) Other factors related to the project as the City Council deem relevant.

(Ord. 2000-936)

§ 152.543 TERM OF APPROVAL.

(A) If application has not been made for final Site Plan Review for all or part of the property within the development plan by December 31 of the year following the date of its approval, the development plan approval will lapse unless the applicant requests an extension of that approval. An extension may be valid for one year and may be approved by the City Council.

(B) If no construction has occurred on the property included within the development plan by December 31 of the year following the date of final site plan approval, approval for the development plan will lapse unless an extension has been approved by the City Council. An extension may be valid for one year and may be approved by the City Council.

(Ord. 2000-936)

§ 152.544 SITE PERFORMANCE STANDARDS.

All development plans submitted for approval must reflect these following additional performance standards applicable to the site:

(A) Landscaping.

(1) Wetlands and storm water retention ponds may count, at half credit, toward the required open space if it is treated as an amenity feature on the site.

(2) Trees and shrubs required to screen loading areas may not count toward the total required for the site, unless approved by the

City Council.

(3) All existing, healthy trees on the site must be saved, where possible, or replaced at a ratio of 2 to 1 caliper diameter inches.

(4) No berms may have a slope greater than a 3:1 ratio.

(B) *Screening*

(1) Loading docks:

(a) From highways - screened with walls constructed of the same materials as the building at a height necessary to screen the entire truck from view.

(b) From all other public rights-of-way or abutting residential areas - screened from view with undulating berms to an average height of eight feet. An additional four feet of plant material spaced to obscure views of trucks parked at the loading areas year round. At a minimum the additional four foot screening may be six foot coniferous trees planted ten foot on center in a sawtooth pattern

(2) Parking areas:

(a) From local streets - screening includes undulating berms for an average height of four feet and an additional two foot of plant material spaced to partially obscure views of the parking lot.

(b) From collectors and arterials, and when abutting residential - screening includes undulating berms for an average height of six feet and an additional two foot of plant material spaced to partially obscure views of the parking lot.

(C) *Parking and impervious surface areas.*

(1) Impervious surface areas may be set back according to the following:

(a) From local streets - 30 feet from public rights-of-way.

(b) From all highways, other arterials, collectors, and residential areas - 60 feet from public rights-of-way.

(c) The above setbacks may be increased if necessary to accommodate the screening required in this chapter.

(2) *Landscaping*.

(a) A minimum of ten percent of the hardsurfaced area of the parking lot must be landscaped.

(b) Landscaped islands in the parking lot may not be used to satisfy the parking lot landscape requirement or the total required open space for the site except where islands are greater than 500 square feet in size and have a minimum width of ten feet.

(c) Landscaped islands may contain a minimum of 400 square feet and may be planted with a minimum of two overstory deciduous trees no smaller than 2½ caliper inches in diameter and eight shrubs no smaller than 18 inch potted.

(3) Visitor drop-off zones and parking spaces must be provided near visitor entrances.

(4) Landscape layout and design must clearly define and direct pedestrian movement through parking areas with a direct, continuous, five foot wide, concrete sidewalk that connects with sidewalks of abutting properties or public right(s)-of way.

(5) When parking structures are proposed, the architectural design and use of materials must be similar or compatible with the architecture of the principal building(s). No parking structures may be located between the principal buildings and a highway.

(6) *Shared parking*. Shared parking arrangements may qualify to reduce the required parking in §§ 152.140 through 152.146 by up to 20%. Properties qualify for shared parking if in compliance with § 152.145 and the parking plan for the area must demonstrate required, but not installed, parking, as well as meet all other applicable ordinances pertaining to parking. Demonstrated parking areas may not count toward green space requirement.

(7) Driveways may be consolidated to minimize external street congestion.

(8) Bicycle racks may occupy a maximum of two parking stalls without additional parking required.

(D) *Fences*.

(1) The following is prohibited: chain-link fences, barbed or concertina wire, snow fences, electric fences, wooden fences (unless

constructed with brick or masonry columns, etc.) and the like.

(2) Gates must match fencing in design, material, height and color.

(E) Exterior storage or display of articles, goods, materials, machinery, equipment, fleet vehicles, plants, trash, dumpsters, materials for recycling, storage containers or similar items, are not permitted.

(F) *Utilities*.

(1) All permanent utilities must be underground.

(2) All utility appurtenances such as telephone pedestals, meters, transformers, etc. may not be visible from abutting properties, parking areas, public streets and pedestrian walkways. They must be screened from view with walls that are constructed with the same materials as the principal building and/or landscaping materials. Transformers must be grouped with meters whenever possible.

(G) *Accessory structures*. Accessory structures are not permitted, with the exception of retaining walls and other walls and fences as mentioned previously in this section. The prohibition on accessory structures does not include gazebos, picnic shelters or other structures that are typically used as landscaping accents.

(Ord. 2000-936)

§ 152.545 BUILDING PERFORMANCE STANDARDS.

(A) *Building orientation*.

(1) Loading docks, and the like, may not be visible from building entries accessible to the public, residential areas or the highway or other public rights-of-way. For buildings with visibility on all sides of the building, the loading docks or areas must be placed adjacent to the lowest classification road with screening from all the higher classification roads. Views of such areas must be screened as defined elsewhere in this code. The city may allow some flexibility for views from certain portions of the overpasses and entrance/exit ramps that are significantly raised above the average grade of the adjacent properties. Concrete pads may be provided at all loading and servicing bays.

(2) Buildings and other site elements may not be located in strip-like arrangements on one parcel.

(3) *Building setbacks:*

(a) Public rights-of-way - 60 feet

(b) Interior property lines - 20 feet or the height of the building whichever is greater.

(c) Residential property - 110 feet.

(4) Multiple principal buildings on a single parcel must be designed to complement each other and must be built of similar materials. Emphasis on building position may be made to give visual interest.

(B) *Building form*.

(1) Buildings must have a highly visible entry and must feature no fewer than two of the following: canopies, overhangs, arcades, outdoor patios, integral planters, display windows, or other architectural details. Developments with multiple buildings must cluster building entries.

(2) Large, uninterrupted planes are not permitted. No wall may have an uninterrupted length exceeding 80 feet without including at least two of the following: changes in plane; changes in color, texture, materials or masonry pattern; windows; or an equivalent element that subdivides the wall.

(3) *Building height studies*. For all structures over three stories in height, the city reserves the right to require view-shed analysis within 1,000 feet of a development or sun-shadow studies to protect other developments from day-time permanent shadows.

(4) *Building Materials*. All buildings must have at least two or more of the following facade materials in any combination on each facade: brick, stone, glass. Other materials, such as architecturally textured concrete precast panels but not including smooth concrete block may be permitted at the city's discretion through the Site Plan Review process if they are determined to be consistent with the surrounding environment and the purpose of this section. The design on facades not visible from a public right-of-way or residential uses may be less ornamental than those visible from public right(s)-of-way, but may still use the same materials as the rest

of the building. Walls used for screening must use the same building materials as the principal building(s).

(C) *Rooftops.*

(1) Roof surface materials and texture may be chosen considering their effect on the views of other sites and structures.

(2) Roof-mounted mechanical equipment, vents, and stacks, may be minimized and positioned so that they will not be seen from public rights-of-way or adjacent properties. If the equipment is visible from public rights-of-way or adjacent properties, the equipment must be screened. Screening must be in the form of parapet walls constructed of the same building materials as the principal building. Long runs of exposed duct-work, pipes, conduits or other similar items are prohibited.

(3) Rooftop solar collectors, skylights, and other potentially reflective rooftop building elements may be designed and installed in a manner which prevents reflected glare and obstruction of views from other sites and structures. Screening may be in the form of walls constructed of the same building materials as the principal building.

(4) In those circumstances, such as freeway overpasses, where parapet walls would be unable to screen the equipment, screening may be accomplished using walls constructed of one or more of the materials used on the principal building, as approved by the City Council.

(Ord. 2000-936; Am. Ord. 2003-997, passed 5-12-03)

§ 152.546 OTHER REQUIREMENTS.

The City Council may apply additional requirements as necessary to implement the purpose of this overlay.

(Ord. 2000-936)

§ 152.547 ALLOWABLE USES.

The permitted and conditional uses allowed in the Highway Overlay shall be the same as the underlying zoning district, with the exception that distribution centers/warehousing uses are not permitted.

(Ord. 2001-952, passed 5-14-01)

PLANNED DEVELOPMENT (PD) OVERLAY

§ 152.560 PURPOSE.

The purpose of the Planned Development Overlay is to promote creative and efficient use of land by providing design flexibility in the application of the provisions of a primary zoning district by providing an overlay district on top of any of the primary zoning districts. It is the applicant's responsibility to demonstrate that the proposed Planned Development is not simply for enhanced gain and accomplishes one or more of the following:

(A) Introduce flexibility of site design and architecture for the conservation of land, natural features and open space through clustering of structures, facilities, amenities and activities for public benefit;

(B) Improve the efficiency of public streets and utilities through a more efficient and effective use of land, open space and public facilities through assembly and development of land in larger parcels;

(C) Provide mixed land use and land use transitions in keeping with the character of adjacent land uses in harmony with the Comprehensive Plan and the underlying zoning districts; and,

(D) Provide for the clustering of land parcels for development as an integrated, coordinated unit as opposed to a parcel by parcel, piecemeal approach and to maintain these parcels by central management including integrated and joint use of parking, maintenance of open space and similar features, and harmonious selection and efficient distribution of uses.

(Ord. 2000-936)

§ 152.561 USES.

Within the PD overlay, the uses are determined by the underlying zoning district and in harmony with the Comprehensive Plan. All conditional uses must be considered permitted to eliminate the overlapping procedural requirements of individual conditional use provisions.

(Ord. 2000-936)

§ 152.562 SUBMITTAL REQUIREMENTS.

All property with a Planned Development Overlay requires a Development Plan. The Development Plan shall be preceded by a Preliminary (Concept) Plan.

(A) *Preliminary Development Plan*. Applicants shall submit a preliminary development plan for the affected property. If submitted the preliminary plan involves the entire Development Plan property.

(B) *Development Plan*. Applicants shall submit a Development Plan for the entire property proposed for development. A request for a rezoning may be included in the Development Plan materials. Approval of a development plan shall be subject to the procedures for submittal, notification and public hearing defined in §§ 152.030 through 152.039, except as modified in this section. No final approvals may be granted by the city to a Development Plan until all necessary approvals for an EIS, EAW, ISP or Comprehensive Plan amendment have been granted. The City Council may attach such conditions to their actions as they determine necessary or convenient to better accomplish the purpose of this section.

(C) *Site Plan Review*. All proposed uses shall be subject to the Site Plan Review requirements found in §§ 152.030 through 152.039. For projects to be constructed in a single phase, Site Plan Review may be combined with the process for Development Plan approval, at the discretion of the City Manager.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01)

§ 152.563 PROCEDURES.

(A) The review and consideration of the Preliminary Development Plan and the Development Plan by the city follows the procedures for the public hearing process as defined in §§ 152.030 through 152.039.

(B) The City Manager must maintain copies of city policy concerning the information required for all applications.

(C) *Development Plan Required*. No permits related to the preparation of the site may be issued for a property within a PD overlay unless a Development Plan has been adopted by the City Council; No permits for the construction of the project can be issued for a property within a PD overlay unless a Site Plan Review has been approved by the City Council for the development.

(D) *Review*. The Planning Commission and City Council shall base their recommendations and actions regarding approval of a Preliminary Development Plan and Development Plan on consideration of the following items:

(1) Conformance of the proposed Plan with the regulations of this section and the Comprehensive Plan.

(2) Internal organization and adequacy of various uses or densities, circulation and parking facilities, urban services, recreation areas, open spaces, screening and landscaping, and the ability to demonstrate that a viable development will be created.

(3) Other factors related to the project as the Planning Commission and City Council deem relevant. The Planning Commission and City Council may attach such conditions to their actions as they determine necessary or convenient to better accomplish the purposes of this section.

(Ord. 2000-936; Am. Ord. 2001-952, passed 5-14-01)

§ 152.564 GENERAL REQUIREMENTS.

(A) *Maintenance requirements*. If common open space or service facilities are provided within the PD, the PD contains provisions to assure the continued operation and maintenance of such open space and service facilities to a predetermined reasonable

standard. Open space and facilities may be placed under the ownership of one of the following, as approved by the City Council:

(1) Dedicated to the public, where a community-wide use is anticipated and the City Council agrees to accept the dedication;

(2) Landlord control, where only use by tenants is anticipated; or

(3) Property owners association, provided all of the following conditions are met:

(a) Prior to the use, occupancy, sale or the execution of contract for sale of individual buildings, units, lots, parcels, tracts or common areas, a declaration of covenants, conditions and restrictions or an equivalent document or a document, as specified by state statute, and a set of floor plans, as specified by state statute, must be filed with the city. Filing with the city is to be made prior to the filings of the declaration or document or floor plans with the recording officers of the county.

(b) The declaration of covenants, conditions and restrictions, or equivalent document to the satisfaction of the City Attorney, may specify that deeds, leases or documents of conveyance affecting buildings, units, lots, parcels, or tracts may subject the properties to the terms of the declaration.

(c) The declaration of covenants, conditions and restrictions may provide an owners' association or corporation may be formed and that all owners may be members of the association or corporation which may maintain all properties and common areas in good repair and which may assess individual property owners proportionate shares of joint or common costs. This declaration may be subject to the review and approval of the City Attorney. The intent of this requirement is to protect the property values of the individual owner through establishing adequate private control.

(d) The declaration may additionally, among other things, provide that in the event the association or corporation fails to maintain properties in accordance with the applicable rules and regulations of the city or fails to pay taxes or assessments on properties as they become due and in the event the city incurs any expenses in enforcing its rules and regulations, which expenses are not immediately reimbursed by the association or corporation, then the city has the right to assess each property its pro rata share of the expenses. Such assessments, together with interest and costs of collection, may be a lien on each property against which each such assessment is made.

(e) Membership is mandatory for each owner, and any successive buyer.

(f) The open space restrictions are permanent and not for a limited period of years, unless specifically approved by the city.

(g) The association is responsible for liability insurance, local taxes, and the maintenance of the open space facilities to be deeded to it.

(h) A property owner must pay their pro rata share of the cost of the Association by means of an assessment to be levied by the Association which meets the requirements for becoming a lien on the property in accordance with Minnesota Statutes.

(i) The Association must be able to adjust the assessment to meet changed needs.

(j) The by-laws and rules of the Association and all covenants and restrictions to be recorded must be approved by the City Council prior to the approval of the Development Plan for the PD.

(B) *Staging of public and common open space:* When a PD provides for common private or public open space, and is planned for a staged development over a period of time, the total area of common or public open space or land escrow security in any stage of development may, at a minimum, bear the same relationship to the total open space to be provided in the entire PD as the stages or units completed or under development bear to the entire PD.

(C) *Density*. The maximum residential density of a PD may not exceed the maximum residential density permitted by the Comprehensive Plan.

(D) In any PD, all utilities, including telephone, electricity, gas and cable must be provided underground.

(E) *Sewer connections*. Where more than one unit is served by a sanitary sewer lateral which exceeds 300 feet in length, provision must be made for a manhole to allow adequate cleaning and maintenance of the lateral. All maintenance and cleaning must be the responsibility of the property owners' association or owner.

(F) *Landscaping/screening/fencing*. All must conform to the applicable provision of this chapter.

(G) *Setbacks*.

(1) The front, rear and side setback restrictions on the periphery of the property to which the PD is applied may, at a minimum,

be the same as the setbacks which are common to the area and generally consistent with this chapter.

(2) Non-residential buildings located along roadways that are part of a private internal street system may be set back a minimum of 15 feet.

(3) No building within the project may be nearer to another building than one-half the sum of the building heights of the two buildings.

(H) *Subdivision of land in the Planned Development.* In the event that land in the Planned Development is to be subdivided into lots for the purpose of separate ownership, the subdivision may occur under the platting procedures and according to standards contained elsewhere in the City Code. The preliminary plat may be processed in conjunction with the Development Plan. A separate action on the final plat may be processed before the final site plan receives approval.

(Ord. 2000-936)

§ 152.565 MODIFICATIONS OR AMENDMENTS.

Minor modifications or amendments of a Development Plan are subject to the procedures for Site Plan Review established by this chapter. Major modifications or amendments, including changes in land use, density, maintenance of open space or common areas, or extensive changes to road, utility, or open space must follow the same procedures for submittal, notification and public hearing as the original development plan approval.

(Ord. 2000-936)

§ 152.566 REVOCATION OF THE DEVELOPMENT PLAN.

The City Manager must review all permits issued and construction undertaken and compare actual development with the approved development schedule. If the City Manager finds that development fails in any respect to comply with the Development Plan as finally approved, the Council must be notified immediately. Within 30 days of such notice, the Council may either by ordinance revoke the PD permit, and the land may thereafter be governed by the regulations applicable in the district in which it is located; or may take such steps as it deems necessary to compel compliance with the Final Plans as approved; or requires the landowner or applicant to seek an amendment of the Development Plan. Additional revocation procedures are also specified elsewhere in this chapter.

(Ord. 2000-936)

ADDITIONAL PROVISIONS

§ 152.570 NOISE POLLUTION CONTROL.

The following state agency regulations are adopted by reference: Minnesota Pollution Control Agency, Noise Pollution Control Section, 6 MCAR 4.2004 and NPC 1.

(Ord. 2001-952, passed 5-14-01)

CHAPTER 153: STORMWATER MANAGEMENT

Section

§ 153.01 TITLE.

Chapter 153 of the Brooklyn Park City Code shall be known and may be referred to as the "Stormwater Management Ordinance" or the "Stormwater Management Chapter." When referred to herein it shall be known as "this chapter."

(Ord. 2017-1217, passed 7-10-17)

§ 153.02 PURPOSE.

This chapter is established to promote, preserve and enhance natural resources within the City of Brooklyn Park and protect them from adverse effects occasioned by poorly sited development or incompatible activities by regulating land disturbing or development activities that would have an adverse and potentially irreversible impact on water quality and unique or fragile environmentally sensitive land. This chapter minimizes conflicts and encourages compatibility between land disturbing and development activities and environmentally sensitive lands. By requiring detailed review standards and procedures for land disturbing or development activities proposed for such areas, this chapter achieves a balance between urban growth and development and the protection of water and natural resources within the city.

(Ord. 2017-1217, passed 7-10-17)

§ 153.03 SCOPE.

(A) *Applicability.*

(1) Every applicant for subdivision approval, conditional use permit, or a grading permit to allow land disturbing activities must submit a stormwater management plan to the Engineering Department. The stormwater management plan shall be submitted with the building permit, grading permit application, or as directed by the Engineering Department. No subdivision approval or grading permit will be issued until approval of the stormwater management plan or a waiver has been obtained in conformance with the provisions of this chapter.

(2) Every applicant for subdivision approval or a grading permit that involves wetland disturbing activities or work near wetlands must submit a wetland assessment and delineation report to the Engineering Department. The wetland assessment and delineation report shall be submitted with the grading permit application, or as directed by the Engineering Department. No subdivision approval, or grading permit will be issued until approval of the wetland replacement plan application or a Certificate of Exemption has been obtained in conformance with the provisions of this chapter and the Minnesota Wetland Conservation Act of 1991, M.S. §§ 103G.222 - .2373 ("WCA").

(3) Every applicant for a building permit, subdivision approval, conditional use permit, or a grading permit must submit an application for an erosion control plan to the Engineering Department. The erosion control plan shall be submitted with the building permit application, land use application, grading permit application, or as directed by the Engineering Department. No grading permit or building permit will be issued until approval of the erosion control plan has been obtained in conformance with the erosion control measures, standards and specifications contained in the MPCA's Minnesota Stormwater Manual, or as otherwise approved by the City Engineer.

(B) *Exemptions*. The provisions of this chapter do not apply to:

(1) Any part of a subdivision if a preliminary plat for the subdivision that has been approved by the City Council on or before the effective date hereof.

(2) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(3) Excavations or land moving activities involving less than 50 cubic yards of soil.

(4) Emergency work to protect life, limb, or property.

(C) *Waiver*. The Engineering Department, may waive any of the requirements of this chapter upon making a finding that compliance with the requirement will involve an unnecessary hardship and the waiver of such requirement will not adversely affect the water quality and natural resources of the city or adversely impact environmentally sensitive land. The Engineering Department may require as a condition of the waiver that the applicant dedicates easements or construct certain facilities as it deems necessary.

(Ord. 2017-1217, passed 7-10-17)

§ 153.04 SEVERABILITY.

Every section or subdivision of this chapter is declared separable from every other section or subdivision. If any section or subdivision is held to be invalid by competent authority, no other section or subdivision shall be invalidated by such action or decision.

(Ord. 2017-1217, passed 7-10-17)

§ 153.05 INCORPORATION BY REFERENCE.

(A) The following are hereby incorporated into this chapter by reference:

(1) The National Pollutant Discharge Elimination System Permit, MN R100001 (NPDES Construction General Permit) issued by the MPCA, August 1, 2013, as amended. The NPDES Construction General Permit.

(2) The city's Surface Water Management Plan. These standards shall serve as the official guide for principles, methods, and practices for proposed development activities.

(Ord. 2017-1217, passed 7-10-17)

§ 153.06 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. The owner, their agent, or representative having interest in land where an application for city review of any permit, use or development is required by this chapter.

BEST MANAGEMENT PRACTICE (BMP). Practices to reduce the volume of runoff, and improve water quality, to prevent pollution of waters of the state. ***BEST MANAGEMENT PRACTICES*** are designed to reduce stormwater runoff volume, peak flows, and/or nonpoint source pollution through evapotranspiration, infiltration, detention, and filtration, and may include activities, prohibitions of practices, treatment requirements, operating procedures, and other management practices.

CHANNEL. A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CONSTRUCTION ACTIVITY. Any disturbance to the land that results in a change in the topography, existing soil cover, or the existing soil topography that may result in accelerated stormwater runoff, including clearing, grading, filling, and excavating.

CONTROL MEASURE. A practice or combination of practices to control erosion and attendant pollution.

DETENTION FACILITY. A permanent natural or human-made structure, including wetlands, for the temporary storage of runoff which contains a permanent pool of water.

FLOOD FRINGE. All the land in a flood plain not lying within a delineated flood way. Land within a floodway fringe is subject to inundation by relatively low velocity flows and shallow water depths. The flood fringe includes at a minimum, the areas designated as zone AE on the Flood Insurance Rate Map outside of the floodway, except as modified on the Zoning Overlay Map.

FLOOD PLAIN, GENERAL. A 100-year flood plain area shown on the Flood Insurance Rate Map where flood way and flood fringe boundaries and/or 100-year flood elevations have not been determined. These areas include areas designated as Zone A on the Flood Insurance Rate Map and zone AE areas where a floodway is not shown.

FLOODWAY. The channel of a natural stream or river and portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream or river. The floodway, at a minimum, includes the floodway areas shown on the Flood Insurance Rate Map and as depicted on the Zoning Overlay Map.

HYDRIC SOILS. Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

HYDROPHYTIC VEGETATION. Macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

IMPERVIOUS SURFACE. Any surface that prevents absorption of water into the ground. Examples of impervious surfaces include, but are not limited to, cement, asphalt, and paving brick.

LAND DISTURBING OR DEVELOPMENT ACTIVITIES. Any change of the land surface including removing vegetative cover, excavating, filling, grading, and the construction of any structure.

MAINTENANCE AGREEMENT. A document recorded against the property which provides for long-term maintenance of stormwater treatment practices.

NEW DEVELOPMENT. Any construction activity that is not defined as redevelopment.

NEW IMPERVIOUS SURFACE. Any newly constructed surface area that changes the infiltration rate from a pervious surface to that of an impervious surface.

PERSON. Any individual, firm, corporation, partnership, franchisee, and association.

PERVIOUS SURFACE. Any surface area that allows infiltration of all or the majority of the precipitation that falls on it. Pervious surfaces include turfgrass, rain gardens, planting beds, and other infiltration BMPs.

PLAN. A stormwater management plan governed by this chapter.

PUBLIC WATERS. Waters of the state as defined in M.S. § 103G.005, Subd. 15, as it may be amended from time to time.

REDEVELOPMENT. Any construction activity where, prior to the start of construction, the areas to be disturbed have 15% or more of impervious surface.

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 the Flood Insurance Study.

RETENTION FACILITY. A permanent natural or human-made structure that provides for the storage of storm water runoff by means of a permanent pool of water.

SEDIMENT. Solid matter carried by water, sewage, or other liquids.

STORMWATER MANAGEMENT. The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak discharge rates.

STORMWATER TREATMENT PRACTICES. Measures, either structural or nonstructural, that are determined to be the most effective and practical means of preventing or reducing point source or nonpoint-source pollution inputs to stormwater runoff and waterbodies.

STRUCTURE. Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

WATERCOURSE. A permanent or intermittent stream or other body of water, either natural or fabricated, which gathers or carries surface water.

WATERSHED. The total drainage area contributing runoff to a single point.

WETLAND. Poorly drained, environmentally sensitive lands as designated by M.S. § 103G.221 et seq. known as the Wetland Conservation Act, or any other state or federal agency.

(Ord. 2017-1217, passed 7-10-17)

§ 153.07 STORMWATER MANAGEMENT PLAN.

(A) *Approval procedures.*

(1) *Application.* A written application for stormwater management plan approval, along with a proposed stormwater management plan and maintenance agreement, shall be filed with the Engineering Division of the Operations and Maintenance Department. The application shall include a statement indicating the grounds upon which the approval is being requested, that the proposed use is permitted by right or as an exception in the underlying zoning district, and adequate evidence showing that the proposed use will conform to the standards set forth in this chapter and the City Code.

(2) *Required plan submittals.*

(a) Two sets of clearly legible blue or black lined copies of drawings, electronic copy of drawings, and required information shall be submitted to the Engineering Division of the Public Works Department along with the process and approval fee. The plans shall be drawn at a minimum scale of one inch equals 100 feet and shall contain the following information:

1. *Existing site map.* A map of existing conditions showing the site and immediately adjacent areas within 200 feet of the site, including:

a. The name and address of the applicant, the section, township and range, north point, date and scale of drawing and number of sheets.

b. The location of the property by showing an insert map at a scale sufficient to clearly identify its location and giving such information as the name and numbers of adjoining roads, railroads, utilities, subdivisions, cities, townships and districts or other landmarks.

c. The existing topography with a contour interval appropriate to the topography of the land but in no case having a contour interval greater than two feet.

d. A delineation of all ponds, infiltration features, streams, rivers, public waters and wetlands located on and immediately adjacent to the site, including the depth of the water, the normal water level (NWL), the 100-year high water level (HWL), the ordinary high water level (OHW), a description of all vegetation which may be found in the water, a statement of general water quality and any classification given to the water body or wetland by the Minnesota Department of Natural Resources (MnDNR), the MPCA or the United States Army Corps of Engineers (USACE).

e. The location and dimensions of existing stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate stormwater is conveyed from the site, identifying the receiving stream, river, public water, or wetland, and setting forth those areas of the unaltered site where stormwater collects.

f. A description of the soils of the site, including a map indicating soil types of areas to be disturbed as well as a soil report containing information on the suitability of the soils for the type of storm water system proposed and describing any remedial steps to be taken by the applicant to render the soils suitable.

g. The location and description of any vegetative cover and a clear delineation of any vegetation proposed for removal.

h. The location of 100-year floodplains, flood fringes and floodways.

i. The locations of any existing overhead or underground utilities.

j. The locations of property lines and easements.

k. A city approved benchmark listing location and elevation.

(3) *Site construction plan.* A site construction plan including:

(a) Locations and dimensions of all proposed land disturbing activities and any phasing of those activities.

(b) Total site area.

(c) Total area disturbed.

(d) Locations and dimensions of all temporary soil or dirt stockpiles.

(e) Locations and dimensions of all construction site erosion control measures necessary to meet the requirements of this chapter. A schedule of the anticipated start and completion date of each land disturbing activity including the installation of construction site erosion control measures needed to meet the requirements of this chapter.

(f) Provisions for maintenance of the construction site erosion control measures during construction.

(4) *Plan of final site conditions.* A plan of final site conditions on the same scale as the existing site map showing the proposed site changes, including:

(a) Finished grading shown at contours at the same interval as provided above or as required to clearly indicate the relationship of proposed changes to existing topography and remaining features.

(b) A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of all proposed landscape materials which will be added to the site as part of the development.

(c) A drainage plan of the developed site delineating in which direction and at what rate stormwater will be conveyed from the site and setting forth the areas of the site where stormwater will be allowed to collect.

(d) The proposed size, alignment and intended use of any structures to be erected on the site.

(e) A clear delineation and tabulation of all areas which will be paved or surfaced, including a description of the surfacing material to be used.

(f) Any other information pertinent to the particular project which, in the opinion of the applicant or the Engineering Department, is necessary for the review of the project.

(g) Proposed normal water level (NWL), 100-year high water level (HWL), ordinary high water level (OHW) of any ponds, infiltration facilities, streams, rivers, public waters, or wetlands on or downstream from the site.

(h) Building elevations including low floor elevations and low building opening elevations.

(i) Overland emergency overflow routes and their elevations.

(5) *Stormwater calculations.* Calculations demonstrating the following data shall be provided, according to the method established by the Engineering Department:

(a) Drainage maps that show the site, land that drains onto the site, and land that the site drains onto for existing and proposed conditions. Delineated drainage areas for ponds, wetlands, or other relevant waters should be indicated on these maps.

(b) A stormwater model conforming to Engineering Department standards that includes drainage areas, cover types, pond and wetland sizes, pond and wetland outlets, and natural or piped conveyance systems.

(c) Peak runoff rates from the site before and after development demonstrating that the proposed conditions conform to the policies outlined in the city's Surface Water Management Plan and this chapter's design criteria.

(d) Volume of runoff from the site before and after development.

(e) National Urban Runoff Program ("NURP") volume below the normal outlet required and provided in each pond.

(f) Infiltration calculations for proposed conditions.

(g) A narrative summarizing the calculations and demonstrating that proposed drainage alterations do not unreasonably burden upstream or downstream land.

(h) Soil borings, if requested by the Engineering Department.

(6) *Maintenance agreement.* The applicant shall enter into a maintenance agreement with the city that documents all responsibilities for operation and maintenance of long-term stormwater treatment practices. Such responsibility shall be documented in a maintenance plan and executed through a maintenance agreement. All maintenance agreements must be approved by the city and recorded at the Hennepin County recorder's office prior to final plan approval. At a minimum, the maintenance agreement shall describe the following inspection and maintenance obligations:

(a) The responsible party who is permanently responsible for maintenance of the structural and nonstructural measures.

(b) Pass responsibilities for such maintenance to successors in title.

(c) Allow the city and its representatives the right- of-entry for the purposes of inspecting all permanent stormwater management systems.

(d) Allow the city the right to repair and maintain the facility, if necessary maintenance is not performed after proper and reasonable notice to the responsible party of the permanent stormwater management system.

(e) Include a maintenance plan that contains, but is not limited to the following:

1. Identification of all structural permanent stormwater management systems.

2. A schedule for regular inspections, monitoring, and maintenance for each practice. Monitoring shall verify whether the practice is functioning as designed and may include, but is not limited to quality, temperature, and quantity of runoff.

3. Identification of the responsible party for conducting the inspection, monitoring and maintenance for each practice.

4. Include a schedule and format for reporting compliance with the maintenance agreement to the city.

(f) The issuance of a permit constitutes a right-of-entry for the community or city, its contractors, and agents to enter upon the construction site. The applicant shall allow the community city, its contractors, agents and any their authorized representatives, upon presentation of credentials, to:

1. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations or surveys.

2. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations.

3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit.

4. Inspect the stormwater pollution control measures.

5. Sample and monitor any items or activities pertaining to stormwater pollution control measures.

6. Correct deficiencies in stormwater and erosion and sediment control measures.

(B) *Stormwater management plan review procedure.*

(1) *Process.* Stormwater management plans and maintenance agreements meeting the requirements of this chapter shall be submitted to the Engineering Department for review and approval. The Engineering Division shall recommend approval, approval with conditions, or denial of the stormwater management plan and maintenance agreement to the Planning Commission. Following Planning Commission review, the stormwater management plan and maintenance agreement shall be submitted to the City Council for its review along with the Planning Commission's recommendation.

(2) *Duration.* Approval of a stormwater management plan and maintenance agreement submitted under the provisions of this chapter shall expire two years after the date of approval by the City Council unless construction has commenced in accordance with the plan. However, if prior to the expiration of the approval, the applicant makes a written request to the Engineering Department for an extension of time to commence construction setting forth the reasons for the requested extension, the City Council may grant one extension of not greater than one single year.

(3) *Revisions.* A stormwater management plan and maintenance agreement may be revised. All revised plans must contain all information required by this chapter and must be reviewed and approved by the Engineering Department.

(4) *Conditions.* A stormwater management plan and maintenance agreement may be approved by the City Council subject to compliance with conditions that are necessary to ensure that the requirements contained in this chapter are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development; require the construction of structures, drainage facilities, storage basins and other facilities; require replacement of vegetation; establish required monitoring procedures; require that the work be staged over time; require alteration of the site's design to ensure buffering; or require the conveyance to the city or other public entity of certain lands or interests therein.

(5) *Agreement.* Upon approval of the stormwater management plan and maintenance agreement by the City Council, the applicant shall enter into an agreement with the city to ensure that any required improvements are constructed, any required easements are granted or dedicated and that there is compliance with any conditions imposed by the City Council. The agreement shall guarantee completion and compliance with the conditions within a specific time, which time may be extended by the City Council. The agreement shall be in a form acceptable to the city.

(6) *Financial guarantee.* Upon approval of the stormwater management plan and maintenance agreement by the City Council, the applicant shall submit a letter of credit, or cash escrow, to cover 125% of the amount of the established cost of complying with the stormwater management plan. This financial guarantee shall be in a form acceptable to the city and may be incorporated into the financial guarantee provided for grading activities and/or the financial guarantee provided for street and utility activities.

(7) *Fees.* All applications for stormwater management plan and maintenance agreement approval shall be accompanied by a processing and approval fee as set by the most recent edition of the city's adopted Fee Schedule.

(C) *Stormwater management plan approval and implementation standards.*

(1) *Compliance with standards.* No stormwater management plan which fails to meet the standards contained in this section shall be approved by the City Council.

(2) All stormwater management plans must be submitted to the City Engineer prior to the start of construction activity. At a minimum all applicants shall meet the criteria set forth below and observe the standards established in NPDES Construction General Permit requirements.

(3) The city adopts the MPCA's Minnesota Stormwater Manual as its stormwater runoff design standards.

(4) All stormwater management plans must address erosion and sediment control requirements of this chapter.

(5) *Stormwater management requirements for permanent facilities.*

(a) An applicant shall install or construct, on or for the proposed land disturbing or development activity, all stormwater management facilities necessary to meet the criteria of the NPDES Construction General Permit. No private stormwater facilities will be approved by the city unless a maintenance agreement and maintenance plan are provided that defines who will conduct the maintenance, the type of maintenance and intervals of the maintenance to be performed. In the alternative, or in partial fulfillment of this requirement and upon approval of the Engineering Department, an applicant may make an in-kind or monetary contribution to the development and maintenance of regional stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.

(b) Proposed stormwater management plans shall incorporate volume control, water quality control, and rate control as the basis for stormwater management in the proposed development plan on sites without restrictions. All proposed projects shall be in conformance with the most current requirements of the MPCA's Municipal Separate Storm Sewer Systems (MS4) Permit and the Shingle Creek and West Mississippi Watershed Management Commissions, as applicable.

1. *Volume control.*

a. *New development projects less than one acre in size.*

i. The applicant shall provide a detailed plan and/or narrative describing the BMPs that will be incorporated in the development to reduce runoff volume and improve water quality.

ii. There shall be no net increase from pre-project conditions (on an annual average basis) of:

1) Stormwater discharge volume, unless precluded by the stormwater management limitations as defined by the MPCA's MS4 Permit.

2) Stormwater discharges of total suspended solids (TSS).

3) Stormwater discharges of total phosphorus (TP).

b. *New development.* For new, nonlinear developments, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.0 inches of runoff from all impervious surfaces on the site that result in a net increase of impervious of one acre or greater.

c. *Redevelopment.* For redevelopment projects, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.0 inches of runoff from the new impervious surfaces created by the project. There shall be a net reduction from pre-project conditions (on an annual average basis) of:

i. Stormwater discharge volume, unless precluded by the stormwater management limitations as defined by the MPCA's MS4 permit.

ii. Stormwater discharges of TSS.

iii. Stormwater discharges of TP.

2. *Water quality control.*

a. *New development.* Water quality treatment is required to meet NURP guidelines and to result in no net increase from pre-project conditions (on an annual average basis) of stormwater discharges of TSS and TP for projects that result in a net increase of impervious of one acre or greater.

b. *Redevelopment.* Water quality treatment is required to meet NURP guidelines and to result in a net reduction in pre-project conditions (on an annual average basis) of stormwater discharges of TSS and TP for projects that have construction activity that is one acre or greater in size.

3. *Rate control.* Rate control measures are required on new development and redevelopment projects to meet this chapter's design criteria, the Minnesota Stormwater Manual and Shingle Creek and West Mississippi River Watershed Management Commissions requirements.

(c) The applicant shall reduce the need for stormwater treatment practices by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of the wetland or pond.

(d) The following stormwater management practices shall be investigated by the applicant in developing a stormwater management plan in the following descending order of preference, and the results of that investigation shall be provided to the city in written form as a part of the application:

1. Natural infiltration of precipitation on-site.

2. Flow attenuation by use of open vegetated swales and natural depressions.

3. Green infrastructure by use of rain gardens, bioswales, constructed wetlands, and other constructed infiltration practices.

4. Stormwater retention facilities.

5. Stormwater detention facilities.

(e) A combination of stormwater treatment practices may be used to achieve the applicable minimum control requirements specified in the subsection above. Justification shall be provided by the applicant for the method selected.

(f) *Pond design standards.* Stormwater detention facilities constructed in the city shall be designed according to standards established by the Engineering Division of the Operations and Maintenance Department, and shall contain, at a minimum, the following design factors:

1. A permanent pool ("dead storage") volume below the principal spillway (normal outlet) which shall be greater than or equal to the runoff from a 2.5-inch, 24-hour storm over the entire contributing drainage area assuming full development.

2. A permanent pool average depth (basin volume/basin area) of four to ten feet.

3. An emergency overflow (emergency outlet) adequate to control the 100-year frequency critical duration rainfall event.

4. Basin side slopes below the 100-year high water level should be no steeper than 4:1, and preferably flatter. A basin shelf with a minimum width of ten feet and one foot deep below the normal water level is recommended to enhance wildlife habitat, reduce potential safety hazards, and improve access for long-term maintenance.

5. To prevent short-circuiting, the distance between major inlets and the normal outlet shall be maximized.

6. A flood pool ("live storage") volume above the principal outlet spillway shall be adequate so that the peak discharge rate from the 1-, 10- and 100-year frequency critical duration storm is not greater than the peak discharge for a similar storm and predevelopment watershed conditions.

7. Effective energy dissipation devices which reduce outlet velocities to four feet per second or less shall consist of riprap, stilling pools or other such measures to prevent erosion at all storm water outfalls into the basin and at the detention basin outlet.

8. Consideration for aesthetics and wildlife habitat should be included in the design of the pond.

9. A skimming device must be provided to deter floatable pollutants from discharging out of pond.

10. Pond NWL elevations shall be established above the OHW of adjacent MnDNR water bodies, except where topography of the site, floodplain mitigation activities, or other design considerations are determined to be unfavorable for these conditions to occur. This determination shall be performed by an engineer, provided by the applicant, and approved by the Engineering Division of the Operations and Maintenance Department.

11. All constructed ponds shall have a maintenance access bench sufficient to provide access to all inlets and outlets. The maintenance bench shall be located within a designated outlot or within a permanent easement. The maintenance bench shall extend from the outlet elevation to one foot above the outlet elevation and its cross slope shall be no steeper than 10:1. The maintenance bench shall connect to the maintenance access.

12. All constructed ponds shall be provided a maintenance access from an adjacent roadway. The maintenance access shall be provided in the form of an easement no narrower than 20 feet. The maintenance access shall have a longitudinal slope no steeper than 6:1 and minimal cross slope. Maintenance access routes, due to their extra width, also serve well as emergency overflow (EOF) routes.

(g) *Infiltration requirements.* BMPs will be required to the maximum extent practical as determined by the Engineering Division of the Operations and Maintenance Department or its designee.

1. Maximum extent practical shall be the infiltration of runoff from the 100-year, 24-hour rainfall event within 48 hours. The maximum extent practical may be less than this if the Engineering Division of the Operations and Maintenance Department determines that one or more of the following conditions apply:

(a) Infiltration characteristics of soils on site are not favorable for infiltration of stormwater.

(b) The site's drainage course is to regional infiltration or detention facilities controlled by the city that reduce runoff volumes.

(c) When the site's impervious areas are not increased due to development.

(d) Other site conditions that make infiltration of stormwater impractical on the site as determined by the Engineering Division of the Operations and Maintenance Department.

(e) If one or more of these conditions apply, the Engineering Division of the Public Works Department shall quantify infiltration that will be deemed as the maximum extent practical for the site.

2. Infiltration will be prohibited where the infiltration BMP will be constructed in any of the following areas:

a. Where documented past, present, or anticipated future land uses have resulted in or may result in contamination coming in contact with stormwater runoff.

b. With less than three feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock.

c. Where vehicle fueling and maintenance occur.

d. Where industrial facilities are not authorized to infiltrate industrial stormwater under and NPDES/SDS Industrial Stormwater Permit issued by the MPCA.

3. Infiltration will be restricted and subject to additional city review where the infiltration BMP will be constructed in any of the following areas:

a. Within 1,000 feet up-gradient, or 100 feet down-gradient of active karst features.

b. Where drinking water supply management areas are present, as defined by Minn. Rules 4720.51000, subp.13, unless precluded by a local unit of government with an MS4 permit.

c. Soils are predominately Hydrologic Soil Group D (clay) soils.

d. Soil infiltration rates are more than 8.3 inches per hour unless soils are amended to slow the infiltration rate below 8.3 inches per hour.

4. Stormwater runoff shall be treated in a stormwater pond or by other means prior to entering an infiltration facility.

5. The minimum infiltration requirements for any region of the city will be the requirements of the Shingle Creek and West Mississippi River Watershed Management Commissions' policies that govern that region. Shingle Creek and West Mississippi River Watershed Management Commissions' standards may be met through the use of regional or downstream systems prior to discharge of runoff to waters of the state.

6. Infiltration systems must not be excavated to final grade until the contributing drainage area has been constructed and fully stabilized. When the infiltration feature is excavated to final grade, rigorous erosion prevention and sediment control BMPs must be implemented to keep sediment and runoff completely away from the infiltration area.

7. To prevent clogging of the infiltration system, a pretreatment device must be used to settle particles before the stormwater discharges into the infiltrations system.

8. Per the stormwater management requirements for permanent facilities section of this chapter, the infiltration system must provide a water quality volume (calculated as an instantaneous volume) of one inch of runoff (or one inch minus the volume of stormwater treated by another system on the site) from the new impervious surfaces created by the project.

9. The applicant must ensure filtration systems with less than three feet of separation from seasonally saturated soils or from bedrock are constructed with an impermeable liner.

10. A minimum maintenance access of 12 feet is required.

(h) *Mitigation.*

1. Where construction projects cannot meet the TSS and/or TP reduction requirements for new or development projects on the site of original construction, all methods must be exhausted prior to considering alternative locations where TSS and TP treatment standards can be achieved. If the City has determined that all methods have been exhausted, the permittee will be required to identify alternative locations where TSS and TP treatment standards can be achieved. Mitigation projects will be chosen in the following order of preference:

a. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.

b. Locations within the same MnDNR catchment area as the original construction activity.

c. Locations in the next adjacent MnDNR catchment area up-stream.

d. Locations anywhere within the City of Brooklyn Park.

2. In addition, mitigation projects must also meet the following criteria:

a. Mitigation projects shall involve the establishment new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP.

b. Previously required routine maintenance of structural stormwater BMPs cannot be considered mitigation.

c. Mitigation projects must be finished within 24 months after the original construction activity begins.

d. A maintenance agreement specifying the responsible party for long-term maintenance shall be identified.

(i) Stormwater and infiltration facilities must be located at least 50 feet away from the top of bluff.

(j) *Watershed management plans/groundwater management plans.* Stormwater management plans shall be consistent with

the Shingle Creek and West Mississippi River Watershed Management Commissions requirements and groundwater management plans prepared in accordance with Minnesota Board of Water and Soil Resources in accordance with state law.

(k) *Easement.* If the stormwater management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests to permit the flow of water across the property.

(l) *Low floor/building opening elevations.*

1. Any new development or redevelopment shall maintain a minimum building opening elevation of at least three feet above the anticipated 100-year high water elevation as a standard practice. However, if the applicant demonstrates that this requirement would be a hardship, the standard may be reduced to two feet if all of the following can be demonstrated:

a. That, within the two-foot freeboard area, stormwater storage is available which is equal to or exceeds 50% of the storm water storage currently available in the basin below the 100-year elevation.

b. That a 25% obstruction of the basin outlet over a 24-hour period would not result in more than one foot of additional bounce in the basin.

c. That an adequate overflow route from the basin is available that will provide one foot of freeboard for the proposed low building opening.

2. Basement floor elevations must be set to an elevation that meets all of the following criteria:

a. The lowest floor elevation must be at least four feet above the currently observed groundwater elevations in the area.

b. The lowest floor elevation must be at least two feet above the elevation of any known historic high groundwater elevations for the area. Information on historic high groundwater elevations can be derived from any reasonable sources including piezometer data, soil boring data, percolation testing logs, etc.

c. The lowest floor elevation must be at least two feet above the 100-year high surface water elevation for the area unless it can be demonstrated that this standard creates a hardship. If the two-foot standard is determined by the City Council to constitute a hardship, the standard shall be at least one foot above the highest anticipated groundwater elevation resulting from a 100-year critical duration rainfall event. The impact of high surface water elevations on groundwater elevations in the vicinity of the structure should take into consideration the site's distance from the floodplain area, the soils, the normal water elevation of surface depressions in the area, the static groundwater table and historic water elevations in the area. This information shall be provided by a registered engineer or soil scientist.

(m) Impervious surface coverage of each lot must not exceed the impervious surface coverage allowed under the Zoning Ordinance.

(n) Storm sewers shall be designed to accommodate discharge rates associated with a 10-year, 24-hour rainfall event.

(Ord. 2017-1217, passed 7-10-17)

§ 153.08 EROSION CONTROL PLAN.

(A) *Applicability.*

(1) *Application.* An erosion control plan shall be submitted to the Engineering Division of the Operations and Maintenance Department when required by this chapter along with a grading permit application. All applications for a grading permit shall be accompanied by a processing and approval fee as set by the city's Fee Schedule.

(2) *Required plan submittals.* The erosion control plan shall contain all of the following with respect to conditions existing on site during construction and after final structures and improvements have been completed.

(a) A description of and specifications for sediment retention and settling devices.

(b) A description of, specifications for, and detail plates for surface runoff and erosion control devices.

(c) A description of vegetative measures.

(d) A detailed timetable for restoring all disturbed areas.

(e) A graphic representation of the location of all specified erosion and sediment control devices.

(f) An implementation schedule for installing and subsequently removing devices described above.

(g) A maintenance schedule for all sediment and erosion control devices specified.

(h) An estimate of the costs to implement all final and temporary erosion and sediment control measures.

(i) An Information sheet on the parties responsible for constructing and maintaining the erosion control measures as shown on the erosion control plan. The information sheet should contain the phone numbers and addresses of at least two persons and indicate how they can be contacted at all times (days, nights, weekends, etc.) regarding repairing and maintaining the erosion control measures.

(j) The erosion control plan must contain details to specify which erosion and sediment control facilities are permanent and which are temporary.

(k) If required, a NPDES Construction General Permit must be obtained from the MPCA prior to commencing construction activities. The associated stormwater pollution prevention plan (SWPPP) should be included in the erosion control plan and approved by the Engineering Division of the Operations and Maintenance Department prior to construction. A copy of the NPDES Construction General Permit must be provided to the city prior to construction.

(3) *Application review and inspection fees.*

(a) The City of Brooklyn Park shall charge an application review fee for the review of the building permit application and the erosion control plan. As part of this review, the city will review the permittee's as-built survey submitted after the completion of grading activities to ensure that it conforms to the overall erosion control plan for the area. The application fee shall be set by the city's Fee Schedule.

(b) An inspection fee will be charged for any inspections of the site by the city that are needed to review corrective erosion control work or to follow up on previously incomplete work. This inspection fee will be deducted from the financial security. The amount will be set by the city's Fee Schedule. If this fee is not paid within 45 days, the fee may be taken from the financial security provided by the applicant.

(B) *Implementation of erosion control plan.* Prior to the start of any earthwork activities, the permittee must have in place and functional erosion and sediment controls as outlined on the approved erosion control plan and/or SWPPP. Additional erosion control measures may be required as directed by the Engineering Division of the Operations and Maintenance Department or its designee.

(1) No earthmoving activities shall commence until the erosion controls have been field inspected and approved by the Engineering Division of the Operations and Maintenance Department.

(2) At a minimum, the permittee shall meet the specifications set forth below and observe the standards established in the NPDES Construction General Permit requirements:

(a) *Soil stabilization.* Soil stabilization shall be completed in a time period as specified by the NPDES Construction General Permit and the city's general specifications and standards. The City of Brooklyn Park may require the site to be reseeded or a nonvegetative option employed.

(b) *Seeding.* Seeding shall be in accordance with seeding specifications. All seeded areas shall be fertilized, mulched, and disc anchored as necessary for seed retention.

(c) *Soil stockpiles.* Soil stockpiles which shall be inactive for a period of 14 or more days must be stabilized or covered at the end of each workday. Stockpiles shall include perimeter sediment controls and must not be placed in natural buffers or surface waters, including stormwater conveyance systems.

(d) *90% coverage.* The entire site must be stabilized at a 90% coverage, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.

(e) *Site development sediment controls.* Site development sediment controls practices shall include those identified in the city's general specifications including, but not limited to:

1. Settling basins, sediment traps, or tanks.

2. Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.

3. Perimeter control including machine sliced silt fence or other city approved BMP, which shall be in place before, during

and after grading of the site. Fencing shall be removed only after 70% stabilization.

4. Designated as a temporary construction staging area.

(f) *Temporary sediment basins.* For sites that have more than ten acres of disturbed soil that drains to a common location (or, five or more acres for special or impaired waters), one or more temporary sediment basins shall be constructed. Use of temporary basins is encouraged when construction projects will impact steep slopes or when highly erodible soils are present. The basin shall provide treatment to the runoff before it leaves the construction site or enters surface waters. The temporary sediment basins must be designed and constructed as follows:

1. Provide live storage for a calculated volume of runoff from a two-year, 24-hour storm from each acre drained to the basin. All basins shall provide at least 1,800 cubic feet of live storage from each acre drained or more.

2. For basins where the calculation in § 153.08(B)(2)(f)1 has not been performed, a temporary sediment basin providing 3,600 cubic feet of live storage from each acre drained to the basin shall be provided for the entire drainage area of the temporary basin.

3. The outlet structure must be designed to withdraw water from the surface in order to minimize the discharge of pollutants.

4. The basin outlet shall be designed to prevent short-circuiting and the discharge of floating debris.

5. Ensure the basin can be completely drawn down to conduct maintenance activities.

6. Include energy dissipation on the outlet of the basin and a stabilized emergency overflow to prevent failure of pond integrity.

7. Be located outside of surface waters or any buffer zone, and be designed to avoid draining water from wetlands unless appropriate approval from the USACE and the MnDNR is obtained.

8. If installation of a temporary sediment basin is infeasible equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, vegetative buffer strips, or any appropriate combination of measures are required for all down-slope boundaries of the construction area and for side-slope boundaries where appropriate. Determination of infeasibility shall be documented in the erosion and sediment control plan.

(g) *Individual construction site sediment controls.* Individual construction site sediment controls shall include:

1. Rock construction entrance (driveway).

2. Perimeter controls including silt fence in-place before, during and after grading of the site. Fencing shall be removed only after proper turf establishment.

(h) *Waterway and watercourse protection.* Waterway and watercourse protection requirements shall include stabilization of the watercourse channel before, during and after any in-channel work consistent with the city's general specifications.

1. A temporary stream crossing must be installed and approved by the local government unit and regulating agency if a wet watercourse will be crossed regularly during construction.

2. The watercourse channel shall be stabilized before, during, and within 24 hours after any in-channel work.

3. No in-water work shall be allowed in public waters during the MnDNR's work exclusion dates.

4. Prior to placement of any equipment into any waters, all equipment must be free of aquatic invasive species.

5. All on-site stormwater conveyance channels designed according to the criteria outlined in this document. Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels is required.

(i) *Site dewatering.* Site dewatering shall be conducted pursuant to the NPDES Construction General Permit. Water pumped from the site shall be treated by temporary sediment basins, grit chambers, sand filters, or other controls as appropriate to ensure adequate treatment is obtained and that nuisance conditions will not result from the discharge. Discharges from the site shall not be released in a manner that causes erosion, scour, sedimentation or flooding of the site to receiving channels or wetlands.

(j) *Waste and material disposal.* All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel or storm sewer system.

1. *Solid waste.* All unused building materials and waste (including, but not limited to: collected sediment, asphalt and concrete millings, floating debris, paper, plastic, fabric, etc.) must be disposed of accordingly and shall comply with disposal requirements set forth by the MPCA.

2. *Hazardous/toxic waste.* Paint, gasoline, oil and any hazardous materials must be properly stored, including secondary containment, to prevent spills, leaks or other discharges. Access to the storage areas must be restricted to prevent vandalism. Storage and disposal of hazardous or toxic substance must be in compliance with the requirements set forth by the MPCA.

3. *Liquid waste.* All other non-stormwater discharges (including, but not limited to, concrete truck washout, vehicle washing or maintenance spills) produced during the construction activity shall not be discharged to any surface waters.

4. *External washing of equipment and vehicles.* All external washing activities shall be limited to a designated area of the site. All runoff must be contained and wastes from external washing activities must be disposed of properly. No engine degreasing shall be allowed on the site.

5. *Wastes generated by concrete and other washout operations.* All liquid and solid wastes generated by any concrete or other washout operations must be contained in a leak proof facility or impermeable liner. Concrete waste must not come into contact with the ground. Concrete waste must be disposed of properly and in compliance with applicable MPCA regulations.

(k) *Drain inlet protection.* All storm drain inlets shall be protected during construction until all sources with potential for discharging to the inlet have been stabilized. Inlet protection measures must meet the city's standards and specifications.

(l) *Energy dissipation.* Pipe outlets must have temporary or permanent energy dissipation within 24 hours of connection to a surface water.

(m) *Tracking.* Vehicle tracking BMPs (including, but not limited to: rock pads, mud mats, slash mulch, concrete or steel wash racks, or similar systems) must be installed to minimize track out of sediment from the construction site. If vehicle tracking BMPs are not actively preventing sediment from being tracked into the street, the applicant must utilize street sweeping to contain sediment.

(n) *Final stabilization.* Final stabilization is not complete until the following criteria are met:

1. All land disturbing activities must be finished and all soils shall be stabilized by a uniform perennial vegetative cover with a density of 70% or greater of its expected final growth density over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions.

2. The permanent stormwater management system is constructed, meets all of the required design parameters and is operating as designed.

3. All temporary synthetic and structural erosion prevention and sediment control BMPs (such as silt fence) have been removed. BMPs designed to decompose on site may be left in place.

4. For residential construction only, individual lots are considered finally stabilized if the structure(s) are finished and temporary erosion protection and down gradient perimeter control has been completed and the residence has been sold to the homeowner.

5. For construction projects on agricultural land the disturbed land has been returned to its preconstruction agricultural use.

(3) The permittee must maintain the erosion and sediment control measures on the site to the satisfaction of the City Engineer throughout the entire construction process. If erosion and sediment control is not being maintained to the City Engineer's satisfaction, the city may perform remedial work on the site as outlined in this section.

(4) All erosion control systems must be maintained by the permittee in an acceptable condition until turf is established or structural surfaces are constructed to protect the soil from erosion.

(C) *Inspection of erosion control plan.* The city will make periodic inspections of the site to ensure compliance with the erosion control plan. The permittee or his/her agent shall ensure that a trained person will regularly inspect the construction site at least once every seven days until final stabilization and within 24 hours of a rainfall event of one-half inch or greater in a 24-hour period. All inspection and maintenance activities conducted on the site during construction must be recorded in writing and retained within the erosion control plan. Records of each inspection and maintenance activity shall include the following:

(1) Date and time of inspection.

(2) Name of person(s) conducting the inspection.

(3) Findings of inspections, including recommendations for corrective actions.

(4) Corrective actions taken, including the dates, times and the name of the party completing the corrective action.

(5) Date and the amount of rainfall events that are greater than one-half inch in a 24- hour period.

(6) Documentation of any changes made to the erosion and sediment control plan.

(D) *Site and BMP maintenance.* Prior to any construction, the developer shall provide the City Engineer with a schedule for erosion and sediment control inspection and maintenance, including schedules for street cleaning, and street sweeping. All site and BMP maintenance activities must comply with the requirements of the NPDES construction general permit. The applicant shall investigate and comply with the following BMP maintenance requirements:

(1) *Perimeter control.* All perimeter controls must be repaired, replaced or supplemented when they become nonfunctional or the sediment reaches one-half of the height of the fence. Repairs shall be made by the end of the next business day after discovery or as soon as field conditions allow access.

(2) *Temporary sediment basins.* Temporary sedimentation basins must be drained and the sediment must be removed when the depth of the sediment collected in the basin reaches one half the storage volume. Drainage and removal must be completed within 72 hours of discovery or as soon as field conditions allow access.

(3) *Surface waters and conveyance systems.* Surface water, including drainage ditches and conveyance systems, must be inspected for visible signs of sediment being deposited by erosion. The applicant must remove all sediment deposited in surface waters, including drainage ways, catch basins, and other drainage systems and must restabilize the areas of exposed soil as a result of sediment removal. The removal and stabilization must take place within seven days of discovery unless legal, regulatory or physical access constraints prevent remediation. In the event of an access constraint, the applicant shall use all reasonable efforts to obtain access. If access is precluded, removal and stabilization must take place within seven calendar days of obtaining access. The applicant is responsible for contacting all local, regional, state and federal authorities and obtaining any required permits prior to conducting any work.

(4) *Streets and impervious surfaces.* Where vehicle traffic leaves any part of the site, the exit locations must be inspected for visible signs of off-site sediment tracking onto impervious surfaces. Tracked sediment must be removed from all off-site impervious surfaces as soon as possible or within 24 hours of discovery.

(5) *General maintenance.* The applicant shall be responsible for the operation and maintenance of temporary and permanent water quality management BMPs, as well as erosion prevention and sediment control BMPs for the duration of the construction work on the site. The applicant remains responsible until another party has assumed control over all areas of the site that have not established final stabilization and a notice of termination (NOT) has been submitted to the MPCA.

(6) *Infiltration areas.* All infiltration areas must be inspected to ensure that no sediment from ongoing construction activities is reaching the infiltration area and these areas are protected from compaction caused by construction equipment driving across the infiltration area.

(E) *Notification of failure of erosion control plan.* The city shall notify the permittee of the failure of the erosion control measures that have been constructed. The notification will be by phone or written correspondence to the parties listed on the information sheet required by this section. The city, at its discretion, may begin remedial work within 48 hours after notification has been provided.

(F) *Erosion off-site.* If erosion breaches the perimeter of the site, the permittee shall immediately develop a cleanup and restoration plan, obtain a right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the Engineering Division of the Operations and Maintenance Department, may more than seven calendar days pass without any corrective action being taken. If at the discretion of the city, the permittee does not repair the damage caused by the erosion, the city may perform the remedial work required, after notice is provided to the permittee.

(G) *Erosion into streets, wetlands, or other surface waters.* If eroded soils enter, or entrance appears imminent into streets, wetlands, or other surface waters, cleanup and repair shall be immediate. The permittee shall provide all traffic control and flagging required to protect the public during the cleanup operations. If at the discretion of the city, the permittee does not repair the erosion and sedimentation, the city may perform the remedial work required, after notice is provided to the permittee.

(H) *Failure to complete corrective work.* When a permittee fails to conform to any provision of this section within the time stipulated, the city may take the following actions:

(1) *Issue a notice of violation.* When the city determines that an activity is not being carried out in accordance with the requirements of this chapter, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

(a) The name and address of the owner or applicant.

(b) The address when available or a description of the land upon which the violation is occurring.

(c) A statement specifying the nature of the violation.

(d) A description of the remedial measures necessary to bring the development activity into compliance with this chapter and a time schedule for the completion of such remedial action.

(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

(f) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 15 days of services of the notice of violation. Service may be accomplished by mail or by personal delivery of the notice.

(2) *Withhold the scheduling of inspections.*

(3) *Withhold the issuance of a certificate of occupancy.*

(4) *Issue a stop work order.*

(5) *Direct the correction of the deficiency by city forces or separate contract.* The issuance of an erosion control permit constitutes a right-of-entry for the city or its contractor to enter upon the construction site for the purpose of correcting deficiencies with respect to erosion and sediment control. All costs incurred by the city in correcting erosion and sediment control deficiencies, including administrative expenses, shall be reimbursed by the permittee. If payment is not made within 30 days after an invoice is issued, the city may draw from the financial security. If the financial security is of an insufficient amount, the city may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the city, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of M.S. § 429.081 to challenge the amount or validity of assessment.

(Ord. 2017-1217, passed 7-10-17)

§ 153.99 PENALTY.

A person violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties imposed by Minnesota Statutes for misdemeanor offenses.

(Ord. 2017-1217, passed 7-10-17)

TABLE OF SPECIAL ORDINANCES

Table

TABLE I: FRANCHISES

Ord. No.	*Date Passed*	*Description*
1982-383(A)	3-22-82	Granting a franchise to Northern

		Cablevision Northwest Inc.
1983-430(A)	- -	Granting a franchise to Minnegasco.
1987-575(A)	- -	Granting a franchise to Northern States Power.
2003-1006	10-27-03	Granting a franchise to Centerpoint Energy Minnegasco.
2007-1082	12-3-07	Granting a franchise to Northern States Power Company for an electric distribution system and transmission lines.
2015-1200	11-23-15	Implementing electric service franchise fee on Northern States Power Company for providing electric service within the city.
2015-1201	11-23-15	Requiring a gas franchise fee from Centerpoint Energy for providing gas service within the city.

TABLE II: STREET NAME CHANGES

Ord. No.	*Date Passed*	*Description*
1977-233(A)	1-10-77	West 82nd Avenue from approximately Hampshire Avenue North to Zane Avenue shall be renamed Candlewood Drive.
1977-233(A)	1-10-77	82nd Court shall be renamed Candlewood Court.
1977-233(A)	1-10-77	78th Avenue from Lee Avenue North to Kyle Avenue North shall be renamed 80th Avenue North.
1977-233(A)	1-10-77	75th Court from Newton Avenue westerly to end of cul-de-sac shall be renamed 76th Court.
		74th Avenue from Newton Avenue easterly to Morgan Avenue, and Morgan Avenue northeasterly to 75th Avenue, and 75th Avenue

1977-233(A)	1-10-77	from where it joins Morgan Avenue easterly to the east edge of Holsten's Meadowwood Subdivision shall all be renamed Meadowwood Drive.
1977-233(A)	1-10-77	In Men Riv Riverdale 2nd Addition 75th Circle shall be renamed 75th Court; Morgan Avenue North from Meadowwood Drive north to the end of the cul-de-sac shall be renamed North Meadowwood Court; and 74th Circle running easterly from Meadowwood Drive to the end of the cul-de-sac shall be renamed South Meadowwood Court.
1977-233(A)	1-10-77	In Stonybrook 3rd Addition Florida Circle both north and south of Candlewood Drive shall be renamed Florida Court and Douglas Circle both north and south of Candlewood Drive shall be renamed Douglas Court.
1977-233(A)	1-10-77	In the Parkland West Subdivision 81st Lane from Wyoming easterly to 82nd Avenue shall be renamed 81st Avenue North.
1979-283(A)	2-26-79	Meadow Brook Drive between Boone Avenue and Cavell Avenue shall be renamed North Brook Avenue.
1979-283(A)	2-26-79	Meadow Brook Circle between North Brook Avenue (as set forth above) and Cavell Avenue shall be renamed North Brook Circle.
1979-283(A)	2-26-79	Bass Creek Drive from Boone Avenue to the westerly Cavell Avenue shall be renamed Bass Creek Avenue.
1980-337(A)	10-14-80	Pennsylvania Avenue from the junction of Trunk Highway 52; north to the junction of C.S.A.H. 30 shall be renamed West Broadway.

1980-342(A)	10-27-80	Utah Avenue North from 83rd Avenue North 135 feet north to be renamed 83rd Court.
1980-342(A)	10-27-80	74½ Avenue North from County Road 103 (commonly known as West Broadway) to 75th Avenue North be changed to 74th Way.
1980-348(A)	12-15-80	69th Avenue from Boone Avenue westerly to C.S.A.H #18 shall be renamed Erickson Court.
1981-369(A)	11-9-81	73½ Avenue North from Aldrich Avenue North 640 feet east be renamed 73 Way.
1981-369(A)	11-9-81	70th Avenue from Boone Avenue North 930 feet to the west be renamed Northland Drive.
1981-369(A)	11-9-81	Boone Circle and Boone Court be renamed Northland Circle and Northland Court, located on the east side of Boone Avenue North at the 70th Avenue alignment.
1982-377(A)	1-25-82	63½ Avenue from Zane Avenue west 400 feet be renamed Zane Court.
1982-378(A)	1-25-82	77th Avenue North from Zane Avenue North westerly to C.S.A.H. 18 shall be renamed Brooklyn Boulevard.
1984-452(A)	5-29-84	South Park Lane from Boone Avenue North to Mount Curve Boulevard shall be renamed Mount Curve Boulevard.
1984-452(A)	5-29-84	Aldrich Court, starting at the intersection of Meadowwood Drive and Aldrich Avenue North easterly approximately 400 feet shall be named Meadowwood Drive.
1984-454(A)	6-4-84	Queen Avenue, beginning at Brookdale Drive south approximately 410 feet be renamed Brookdale Court.
		Former CSAH 18 from 81st

1985-493(A)	9-23-85	Avenue to the south city limits of Osseo and the current T.H. 169 from the north city limits of Osseo to 109th Avenue be named Jefferson Highway.
1986-543(A)	9-22-86	Formerly 80½ Avenue North from Yates Avenue North to Toledo Avenue North shall be renamed 81st Avenue.
1986-543(A)	9-22-86	Formerly Kentucky Avenue (cul-de-sac directly south of 85th Avenue North) shall be renamed Kentucky
2003-1003	9-22-03	Former France Avenue North between 101st and 103rd Avenues North shall be renamed Fallgold Parkway North; former Lakeside Drive North shall be renamed Welcome Avenue North; part of former Oxbow Commons Boulevard running east-west east of Zane Avenue shall be renamed 100th Avenue North; part of former Oxbow Commons Boulevard running north-south north of 97th Avenue shall be renamed Xenia Avenue North; former Oxbow Lake Place shall be renamed 99th Avenue North; and former Oxbow Way North shall be renamed Xenia Avenue North.
2003-1009	11-17-03	Former 105th Avenue North between Noble Parkway and Winnetka Avenue shall be renamed Oxbow Creek Drive.
2006-1062	8-7-06	That roadway commonly referred to as 97th Avenue North between Noble Parkway and West Broadway with future extension to Highway 169, platted as 97th Avenue in the plats of Deerhaven Estates, Noble Office Park, Woodland Elementary Addition,

		Saint Gerards Addition, Saint Gerards Manor, Oxbow Commons, Target Park 2000, and platted as Liberty Parkway in the plats of Liberty Oaks and Park Place Promenade shall be renamed Oak Grove Parkway.
2009-1105	9-8-09	That roadway commonly referred to as Brookdale Court North with an address range of 2701 to 2745 serving the plat of Parkhaven Villas between Xerxes Avenue and Newton Avenue North shall be renamed Parkhaven Court North.

APPENDIX: FEE RESOLUTION

RESOLUTION 2016-208
CITY OF BROOKLYN PARK
COUNTY OF HENNEPIN
STATE OF MINNESOTA

A RESOLUTION AMENDING FEE RESOLUTION NO. 2000-202 ADOPTING A SCHEDULE OF FEES AND CHARGES FOR
VARIOUS SERVICES, LICENSES AND PERMITS FOR THE CITY OF BROOKLYN PARK, MINNESOTA

Now Therefore, the City Council of the City of Brooklyn Park, Minnesota, resolves:

TABLE OF CONTENTS BY TITLE OF TABLE

City Services and Supplies	
Demolition and Moving of Buildings	§ 103.02
Fire Hydrants	§§ 100.59 and 100.64
Fire Protection and Prevention Service Fees	§ 93.09
Fire Suppression Systems/Alarm Systems Fees	§§ 93.09 and 103.02
Gas Fees	§ 103.02
Hearing Officer Fee Schedule	-
Mechanical Permit Fees	§ 103.02
Plumbing Fees	§ 103.02
Private Sewer System Permit Fees	§§ 99.81 and 99.82
Pool License Fees	§ 105.02
Sanitary Sewer Rates and Charges	§§ 99.75 to 99.80, 103.02
Storm Sewer Rates and Charges	§ 108.04
Street/Signal Lighting Rates and Changes	§ 109.03
Subdivision and Zoning Fees and Charges	§ 151.041
Water Access Charges	§ 100.63
Water Rates and Charges	§§ 100.55(A) through (D), 100.57, 100.58
Water Maintenance and Fire Protection Charges	§ 100.55(E)
Water Meters	§§ 100.60 and 100.61

TABLE OF CONTENTS BY CODE SECTION

§ 93.25	Business License and Permit Fee Schedule (Annual Consumer Permits)
§§ 93.25 et seq.	Business License and Permit Fee Schedule (Fire Protection and Prevention)
§ 96.43	Business License and Permit Fee Schedule (Streets and Sidewalks)
§§ 98.06 and 98.15	Business License and Permit Fee Schedule (Garbage and Refuse)
§ 99.66	Business License and Permit Fee Schedule (Sewers)
§§ 99.75 to 99.80	Sanitary Sewer Rates and Charges
§§ 99.81 and 99.82	Private Sewer System Permit Fees
§§ 100.55(A) through (D), 100.57, 100.58	Water Rates and Charges
§ 100.55(E)	Water Maintenance and Fire Protection Charges
§§ 100.60 and 100.61	Water Meters
§§ 100.59 and 100.64	Fire Hydrants
§ 100.63	Water Access Charges
§§ 103.01(C) and 103.02	Building Permit Administrative Fees
§ 103.02	Plumbing Fees Table 1-C Plumbing Permit Fees Gas Fees Table 1-B Mechanical Permit Fees Demolition and Moving of Buildings Mechanical Permit Fees Table 1-B Mechanical Permit Fees Fire Suppression Systems/Alarm Systems Fees Building Permit Fees Table 1-A Building Permit Fee Schedule
§§ 93.34, 93.36, 103.02, 103.04, and 110.37	Business License and Permit Fee Schedule (Building Code)
Ch. 105	Business License and Permit Fee Schedule (Swimming Pools)
§ 105.02	Pool License Fees
§ 110.37	Business License and Permit Fee

	Schedule
Ch. 111	Business License and Permit Fee Schedule (Adult Oriented Businesses)
§§ 112.015, 112.036, 112.059, 112.061, 112.062, 112.097	Business License and Permit Fee Schedule (Alcoholic Beverages and Establishments)
113.43	Business License and Permit Fee Schedule (Amusements and Theatrical Entertainment)
§§ 114.04 and 114.05	Business License and Permit Fee Schedule (Food Establishments)
117.30, 117.40 and 117.45	Business License and Permit Fee Schedule (Lodging and Housing Establishments) (Rental Establishment Fees)
§ 117.52	Business License and Permit Fee Schedule (Building Code)
§ 118.04	Business License and Permit Fee Schedule (Excavations and Earth Moving)
§§ 119.30 et seq.	Business License and Permit Fee Schedule (Pawnbrokers and Peddlers)
§ 120.03	Business License and Permit Fee Schedule (Sauna)
§§ 121.06 and 121.09	Business License and Permit Fee Schedule (Taxicabs)
Ch. 122	Business License and Permit Fee Schedule (Tobacco Regulations)
Ch. 150	Business License and Permit Fee Schedule (Signs)
§ 151.041	Subdivision and Zoning Fees and Charges

FEE RESOLUTION

Section 1. All fees and charges in effect as of the date of the adoption of the city code for the city shall remain in effect unless otherwise modified by the provisions of this resolution. All citations below are to various sections of the city code unless otherwise indicated.

Section 2. The following are the fees and charges for the permits, licenses and services listed below which are referenced to the section of the city code which authorizes their establishment:

ABATEMENT FEES

Abatement Costs	*Fee*
$0 - $999	
2005:	$100
2006:	$150
2007:	$150
$1,000 - $4,999	
2005:	$300
2006:	$400
2007:	$400
$5,000 - $9,999	
2005:	$600
2006:	$750
2007:	$750
$10,000 - $14,999	
2005:	$1,000
2006:	$1,250
2007:	$1,250
$15,000 or more	
2005:	$1,000
2006:	$1,500
2007:	$1,500
Abatement of Inoperable/Junk Vehicle	
2005:	$100
2006:	$150
2007:	$150

ADMINISTRATIVE FEE SCHEDULE

Violation	*Fee*
All vehicle impunds	$10

ADMINISTRATIVE PENALTY SCHEDULE

	Violation Description	*Administrative Penalty Amount*
1	All violations of parking codes, except as otherwise noted	$55
2	Management of garbage and refuse for storage and collection (i.e. trash can in view)	$55
3	No visible address numbers on the house	$55
4	Snow and ice removal (i.e. sidewalk shoveling)	$55
5	All violations of animal control regulations, except otherwise noted	$200
6	Parking on unapproved surfaces, overweight vehicles, ext. storage, firewood	$200
7	Parking within 10 feet of a hydrant	$200
8	Fencing setbacks and maintenance	$200
9	Telecommunication permit	$200
10	Earth material storage and excavations	$200
11	Excavations within public right-of-way	$200
12	Zoning Code violations	$200
13	Weight restrictions/transportation permits	$200
14	Junk vehicles	$200
15	Snow removal restrictions, parking restrictions	$200
16	Sign ordinance violations	$200
17	Nuisance - junk and debris violations	$200

	Violation Description	*Administrative Penalty Amount*
18	Failure to obtain a rental license	0 - 10 days after notification - $250
		11 - 20 days after notification - $500
		21 - 30 days after notification - $1,000
		30+ days after notification - $2,000
19	Any violation not specifically described herein	$200
20	Animals without current rabies vaccination	$200
21	Animal at large	$200
22	Failure to obtain required license (i.e. food)	$200
23	Accessory structures	$200
24	Lodging violations	$200
25	Home occupation	$200
26	Non-critical property maintenance	$200
27	Non-critical swimming pool violations	$200
28	Non-critical food inspection violations	$200
29	Long grass	$200
30	Critical unsafe conditions	$500
31	Abandonment/failure to redeem animals from pound	$500
32	Critical property maintenance	$500
33	Critical food inspection violations	$500
34	Critical swimming pool violations	$500
35	Repeat violations within 24 months	Double the amount of the scheduled fine for the previous violation, up to a maximum of

		$2,000
36	Continuing violations	A fine for that can be imposed by the hearing officer for each day the violation continues.

ANIMAL LICENSING FEES

(See §§ 92.37 and 92.38 of the Code)

Licenses	*Fees*
Apiary registration	$75
Spayed or neutered animals *	$10 per year
Animals not spayed or neutered *	$20 per year
Off leash dog exercise area daily fee (on site)	$3
Late license fee	$2
Duplicate tag, if lost or stolen	$1
Board fee for each day an animal is impounded **	$31
Impounding fee **	$20
Second impounding fee for an impoundment within a 12 month period **	$30
Third impounding fee for an impoundment within a 12 month period **	$40
Fourth and subsequent impounding fee within a 12 month period	$50
Registration of dangerous dog	$200
Registration of potentially dangerous dog	$50
Appeal of dangerous dog/potentially dangerous dog designation	$50
Warning sign	$15
Warning tag	$5
*All annual animal licensing fees are for the duration of rabies vaccine effectiveness.	
** All impound and board fees shall be paid in cash.	

BUSINESS LICENSES AND PERMITS FEE SCHEDULE

Business License and Permit Fee Schedule			
Code Section	***Type of License***	***Conditions and Terms***	***Amount***
Adult Oriented Businesses			
Ch. 111	Adult only entertainment business	Annual license	$5,000
Alcoholic Beverages and Establishments			
112.061 112.062	Beer	On sale, annual	$300
		Off sale, annual	$50
		Club, limited one week	$20
		Club, annual	$200
112.015	Liquor (see also beer)	Bottle club, annual	$300
112.036	Liquor (see also beer)	Off-sale, annual	$200
		On-sale, Class A annual	$7,500
		On-sale, Class B annual	$7,000
		Sunday sale, annual	$200
		Club, on-sale (M.S.A. 340:11-7) annual	$200
112.059	Liquor	On-sale to bona fide clubs requires a payment to the general fund of the city	$10
112.097	On-sale wine	On-sale, annual	$800
112.201	Brewer taproom	On-sale, annual	$300
112.210	Brewpub	On-sale, annual	$300
112.401	Cocktail room	On-sale, annual	$300
Amusements and Theatrical Entertainment			
113.43	Motion picture establishments	Indoor theater	$225
		Outdoor theater	$450
		Payable in advance on or before July 1 of each year, all licenses to expire June 30 of each year	
		Per year	$225
Annual Consumer Permits			

93.25	Annual retail fireworks permits	Fireworks only vendors	$350
		All other vendors	$100
93.25	Indoor fireworks permit	Per event	$150
Body Art Establishments			
123.13A	License fee	Annual license, establishment only	$250
123.13B	Late fee	One to 15 days late Sixteen to 30 days late	50% license fee 100% license fee
123.13A	Plan review	100% of license fee	$250
Building Code			
103.04	Parking lot permits	Permit fee	$125
93.34 103.02	Permit for the installation, alteration, maintaining, repairing or removal of underground liquid storage systems	Permit fee	Table 1-A Building Permit Fee Schedule
93.36 110.37	Installation, alteration, maintaining, repairing or removal of underground liquid storage systems	Annual license	$100
Excavations and Earth Moving			
118.04	Land reclamation, excavation, storage	Permit fee	

		200-1,000 cubic yards	$50
		1,000-10,000 cubic yards	$75
		10,000-100,000 cubic yards	$250
		Over 100,000 cubic yards	$600
Fire Protection and Prevention			
93.25 et seq.	Hood cleaning permit	Includes one inspection	$50
93.25 et seq.	Open burning permit	Per burn day - not to exceed 14 days	$60
Food Establishments			
114.05	**Food Type I** - High level of food preparation, diverse menus, large amounts of potentially hazardous foods, holding foods for long periods of time, or complex food processing.	Full service/sit down restaurants, full menu cafeterias, buffet restaurants, catering kitchens, and similar.	$660
114.05	**Food Type II** - Moderate level of food preparation, moderate menu, limited potentially hazardous foods, or foods held and served for a limited time.	Fast food, take out, pizza delivery, delis, drive-ins, ice cream shops, donut shops, limited or catered cafeterias, bakeries, and similar.	$550
114.05	**Food Type III** - Limited food preparation, simple menus, little or no potentially hazardous	Coffee carts and coffee-only shops, bars, concession stands, snack stands, continental breakfasts, and	$395

	foods, or foods only served for a short period of time.	similar.	
114.05	**Food Grocery** - Pre-packaged foods or the sale of foods to be consumed off-site.	Large Grocery - Larger grocery store.	$945
		Small Grocery - Smaller grocery stores, convenience stores, markets, and similar.	$330
		Limited Pre-packaged - Video stores, gift shops, candy racks, and similar.	$85
		Vending Machines.	$25
		Nuts Only.	$10
114.05	**Food Institution** - Churches, day cares, and preschools.	Full Operation - Full kitchen.	$425
	[Note: No charge for places of worship and non-profit organizations.]	Limited Operation - Catered or limited preparation.	$225
		Pre-Packaged.	$115
114.05	**Food Institution** - Schools	Full Operation - Full kitchen.	$470
		Limited Operation - Catered or snacks only.	$240
114.05	**Additional Food Facility** - A separate area of food or beverage preparation. May include bars, receiving areas, catering activities, or additional food establishments.	Per additional Type I, Type II or Large Grocery facility.	
	[The higher-rate facility is	2007:	$180
		2008:	$200

	considered the main facility and each other type is an additional ~~facility.~~]	Per additional Type III or Small Grocery facility.	
		2007:	$90
		2008:	$100
114.05	**Seasonal Food** - Establishment continuously open for 6 business months or less in a calendar year.	The fee will be one-half the regular license fee (minimum $85).	
		2007:	½ license fee
		2008:	½ license fee
114.05	**Itinerant Food** - Each stand, booth, cart, or table.	First day.	
	[Note: No charge for places of worship and non-profit organizations if complete application materials submitted more than 7 days prior to event.]	2007:	$75
		2008:	$75
		Prepackaged foods only.	
		2007:	$50
		2008:	$50
		Each additional day.	
		2007:	$15
		2008:	$15
		Additional stand(s) by the same owner at the same event.	
		2007:	$45
		2008:	$45
114.05	**Mobile Food Unit** - A self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle, used to store,	Full operation - Food preparation, includes cooking facilities.	
		2014:	$150
		Limited operation - Moderate food preparation, includes warming or holding units.	
		2014:	$110
		Pre-packaged - pre-packaged foods.	

	prepare, display or serve food intended for individual portion service that is readily movable without disassembling.	2007:	$90
		2008:	$90
		Additional vehicle.	
		2007:	$75
		2008:	$75
114.06	**Plan Review** - Fee collected for reviewing construction documents for a new or remodeled food establishment.	New.	150% of license fee
		2007:	
		2008:	
		Remodeled.	100% of license fee
		2007:	
		2008:	
114.05	**Additional Inspection Fee**	More than one reinspection.	
		2007:	$110
		2008:	$125
Garbage and Refuse			
98.06	Garbage and refuse collectors	Per annum, first vehicle	$115
		For each additional vehicle	$55
98.15	Incinerators	Per annum	$150
Health and Safety			
93.13	Fireworks display	For each display	$30
		For annual inspection required for Fire Prevention Code	$35
Itinerant Produce Merchant			
119.40	Itinerant produce merchant	Per week	$8
		Per month	$20
		Per season	$75
Lodging and Housing Establishments			
117.30	Lodging - An establishment where sleeping accommodations are let out to the public	Base fee	$160
		Per unit fee (maximum of $1,300)	$5
	Plan Review - Fee collected	New	150%of license

117.04, 117.25 - 117.30	for reviewing construction documents for a new or remodeled bed and breakfast or lodging facility		fee
		Remodeled	100%of license fee
117.01 et seq.	Trades and business licenses	Per annum license	$35
		Per cleaning permit	$35
	Home occupation		$40
Massage Therapy			
124.06A	License fee	Massage enterprise license	$125
		Massage therapist license	$25
124.06A	Late fee	One to 15 days late	50% license fee
		Sixteen to 30 days late	100% license fee
124.07A	Background check	Massage enterprise	$100
		Massage therapist	$100
Rental Establishments			
	Rental Establishment Fees	Annual license	
		(General housing unit)	
		Single-family attached	$150
		Single-family detached	$150
		Double (one side)	$150
		Double (two side)	$150 per unit
		Condominium	$150
		Townhome	$150
		Triplex	$150 per unit
		Small apartments (4 - 15 units)	$200 plus $25 per unit

	Rental Establishment Fees (One or Two inspections)	Annual renewal license	
		(General housing unit)	
		Single-family attached	$150
		Single-family detached	$150
		Double (one side)	$150
		Double (two side)	$150 per unit
		Condominium	$150
		Townhome	$150
		Triplex	$150 per unit
	Rental Establishment Fees (Three inspections)	Annual renewal license	
		(General housing unit)	
		Single-family attached	$200
		Single-family detached	$200
		Double (one side)	$200
		Double (two side)	$200 per failed unit
		Condominium	$200
		Townhome	$200
		Triplex	$200 per failed unit
117.45	Rental Establishment Fees (Four inspections)	Annual renewal license	
		(General housing unit)	
		Single-family attached	$300
		Single-family detached	$300
		Double (one side)	$300
		Double (two side)	$300 per failed unit

	Condominium	$300
	Townhome	$300
	Triplex	$300 per failed unit
Rental Establishment Fees (Five inspections)	Annual renewal license	
	(General housing unit)	
	Single-family attached	$500
	Single-family detached	$500
	Double (one side)	$500
	Double (two side)	$500 per failed unit
	Condominium	$500
	Townhome	$500
	Triplex	$500 per failed unit
Rental Establishment Fees (Six or more inspections)	Annual renewal license	
	(General housing unit)	
	Single-family attached	$1,000
	Single-family detached	$1,000
	Double (one side)	$1,000
	Double (two side)	$1,000 per failed unit
	Condominium	$1,000
	Townhome	$1,000
	Triplex	$1,000 per failed unit
Apartment	Thereafter, the fee will be	$25.00

	Annual License	payable annually on July 1 at the rate of $25 per unit	per unit
117.485	Point of Conversion Fee	Beginning July 1, 2008 a conversion fee of $750 will be charged for all owner occupied single family, double (one side) and double (two side, each side) rental properties.	$750
117.52(C)(4)(a)	Reinspection Fee		$100 per failed unit
119.30 et seq.	Peddlers	Investigation fee - computation of license fee:	
		For each helper or assistant to those using vehicles, which helpers must procure the license as herein provided for peddlers:	
		Per week	$10
		Per year	$35
		For each person proposing to peddle by using hand cart or push cart:	
		Per week	$30
		Per year	$50
		For each person proposing to peddle from a wagon, motor vehicle, railroad car or other vehicle conveyance:	
		Per week	$30
		Per year	$50
Pawnbrokers and Peddlers			
119.30 et seq.	Peddlers	For each person proposing to peddle on foot:	
		Per week	$30
		Per year	$50
		No fee shall be required of one selling products of the farm or orchard actually produced by the seller	

119.05	Pawnbroker	~~Annual~~ Investigation fee per applicant/manager	~~$12,000~~ $1,500
		Transaction fee	$1.50
Sauna			
120.03	Sauna	Calendar year	$10,000
Sewers			
99.66	Scavengers	Dumping fees	$2/1,000 $5 min.
Signs			
Ch. 150	Temporary - each (limits apply)		$75
	Nonresidential zoning districts		
	Wall sign		
	Free standing, Monument		$90
	Residential zoning districts		$150
	Wall sign		$90
	Free standing, monument		$150
	Sign storage/retrieval fee	Less than 5 sq. ft.	
		2005:	N/A
		2006:	$15
		2007:	$15
		5 sq. ft. or more	
		2005:	N/A
		2006:	$40
		2007:	$40
	Failure to obtain sign permit		Fee doubled
150.10	Sign contractor	Annual license for one year or any portion thereof ending December 31 following the effective date of the license	$75
Streets and Sidewalks			
96.43	Street excavation	For each location as set forth in § 650.12	$25

Swimming Pools			
Ch. 105	Public Pools - Pools, hot tubs, spas, wading pools, special purpose pools, and similar.	First pool, indoor.	
		2007:	$360
		2008:	$360
		First pool, outdoor.	
		2007:	$275
		2008:	$275
		Additional pool in the same room or fenced area, indoor.	
		2007:	$330
		2008:	$330
		Additional pool in the same room or fenced area, outdoor.	
		2007:	$225
		2008:	$225
Taxicabs			
121.09	Taxicab drivers	Annual license - for one year or any portion thereof ending December 31 following the effective date of the license	$10
121.06	Taxicabs	Annual license - for each vehicle, for one year or any portion thereof ending December 31 following the effective date of the license	$455
Tobacco Regulations			
Ch. 122	Tobacco	Annual fee	$200
Traffic Rule			
71.49	Street use	Special permits	$15
		Job	$36
		Annual	$120
		Annual refuse compactor	$60
Miscellaneous			
	Plats	See § 345:08	
Basis of fees: (1) For the purpose of this computation, any period of seven calendar days or less shall be considered one week; any period for more than seven calendar days shall be treated as a year; (2) The annual fees herein provided for shall be assessed on a calendar year basis and on and after July 1 the amount of the fee for such annual licenses shall be one-			

half the amount stipulated for the remainder of the year; (3) All annual licenses issued under the provisions of this chapter shall expire on December 31 in the year when issued. Other than annual license shall expire on the date specified in the license.

BUILDING PERMIT ADMINISTRATION FEES

Reason for Change	*Amount of Charge*	*Reference*
Permit fee for residential work for administration and review of residential contractor licenses	$5 per permit	§ 103.01(E)(1)
Copies of permits and documents	As established by Council resolution	§ 103.02(B)
Building Permit Fees	As established by Council resolution	§ 103.01(C)

TABLE 1-A BUILDING PERMIT FEES CITY OF BROOKLYN PARK 2009

Total Valuation	*Fee*
$1.00 to $1,200.00	$51.50
$1,201.00 to $2,000.00	$51.50 for the first $1,200.00 plus $3.37 for each additional $100.00, or fraction thereof, to and including $2,000.00
$2,001.00 to $25,000.00	$78.46 for the first $2,000.00 plus $15.86 for each additional $1,000.00, or fraction thereof, to and including $25,000.00
$25,001.01 to $50,000.00	$443.24 for the first $25,000.00 plus $11.44 for each additional $1,000.00, or fraction thereof, to and including $50,000.00
$50,001.00 to $100,000.00	$729.24 for the first $50,000.00 plus $7.93 for each additional $1,000.00, or fraction thereof, to and including $100,000.00
$100,001.00 to $500,000.00	$1,125,74 for the first $100,000.00 plus $6.34 for each additional $1,000.00, or fraction thereof, to and including $500,000.00
$500,001.00 to	$3,661.74 for the first $500,000.00 plus $5.39 for

$1,000,000.00	each additional $1,000.00, or fraction thereof, to and including $1,000,000.00
$1,000,001.00 and up	$6,356.74 for the first $1,000,000.00 plus $4.14 for each additional $1,000.00, or fraction thereof

Use ICC and State Building Codes & Standards Division square foot cost of construction for determining building valuation and state surcharge fees.

Other Inspections and Fees:

1.	Inspections outside of normal business hours	$51.50 per hour (minimum charge-two hours)
2.	Reinspection fee assessed under provisions of Section 1300.0210 ..	$51.50 per hour
3.	Inspections for which no fee is specifically indicated	$51.50 per hour (minimum charge-one hour)
4.	When submittal documents are required by Section 1300.0130, a plan review fee must be paid	The plan review fee shall be 65% of the building permit fee
5.	Additional plan review required by changes, additions or revisions to plan	$51.50 per hour (deferred submittals)
6.	Shell only buildings	80% of valuations

Maintenance Permits	***Fee***
Roofing/tear off	$2,000 valuation
Roofing/layover	$1,500 valuation
Re-side	$2,500 valuation
Replacement windows	$2,500 valuation
Annual permit	Determined by Building Official
Residential water heater	$25
Residential water softener	$25
Residential lawn irrigation	$25
Accessory Structures	***Fixed Fee***
Pools	$3,000 valuation
Residential decks	$15 per square foot

Covered decks	$25 per square foot
Sheds	$20 per square foot
Carports	$16 per square foot
Garage	$22 per square foot
Screen porch	$35 per square foot
Three season porch	$55 per square foot
Basement finish with bathroom	$12 per square foot
Basement finish without bathroom	$9 per square foot
Steel storage racks (commercial)	$10,000 valuation
Miscellaneous	***Fee***
Temporary certificate of occupancy	Initial issuance/$100
	First 30-day extension/$300
	Second 30-day extension/$600
	Third and final 30-day extension/$1,200
Expired permit renewal	Renewal within 180 days of expiration/one-half original fee
	Renewal after 180 days of expiration/full permit fee
Expedited permit and phased permits	Twice the building permit fee*
Mechanical contractor license	$100/year
Reinspection fee	$51.50 per hour (minimum one hour)
Investigation fee	Twice the building permit fee
* When an applicant demonstrates the existence of extraordinary circumstances or other unique factors relating to the proposed development, the Building Official may authorize expediting or phasing of the permit and/or submittal documents.	
Fees Fixed By State Statute	***Fee***

Minnesota Rule 1300.0160 similar plans	Maximum 25% plan review
Utility Taps	
Sanitary sewer	$150 (was $75)
Water main	$150 (was $75)
Storm sewer	$150 (was $75)
Street Permits	
Street cut	$85 (was $25)
Curb cut	$85 (was $25)
Small Utility Permits	
Xcel	$50 (was $25)
Comcast	$50 (was $25)
Qwest	$50 (was $25)
EMBARQ	$50 (was $25)
CenterPoint Energy	$50 (was $25)
Grading/Excavating	
200 - 1,000 cubic yards	$200 (was $50)
1,001 - 10,000 cubic yards	$350 (was $75)
10,001 - 100,000 cubic yards	$750 (was $250)
100,001 + cubic yards	$1,200 (was $600)

Fee Refunds

The Building Official may authorize refunding not more than 80% of the permit fee paid when no work has been done under a permit issued in accordance with the code.

The Building Official may authorize refunding not more than 80% of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan review is done.

CITY SERVICES AND SUPPLIES

Services and Supplies	***Fee***
Accident report	$.25 per page
Aerial maps	$2
Audited financial reports	$15
Booking fees for outside agencies includes first day of cell	$100
Breathalyzer test to other departments	$25

Canned printout	$20 plus $.25 per first 100 pages
Certified photocopies	$1
City Charter	$.25 per page
City Code of 1972	$70
City maps, large	$4
City maps, small	$2
Color booking photos	$5
Comprehensive plan	$10
Comprehensive plan map	$4
Copies of the reports	$10
EDC Brochure	$.50
Environmental assessment	-
Fingerprinting	$10
Holding cell, each additional day or fraction	$20
Notary services	$5
Ozalid printing	$1.50
Photocopies	$.25 per page
Photographs	$10 per request plus actual cost
Police reports	$.25 per page
Returned check charge (for whatever reason)	$30
Special assessment search	$12 plus actual reprint costs
Topo maps	$25/acre
Utility maps	$3
Video tapes	$25
Wage assignment recording	$5
Waste dumping charge	$1.25 per 1,000 gallons
Zoning maps, large	$10
Zoning maps, small	$5
Zoning Ordinance	$10
Database requests: Set up charge - covers cost of staff time for initial conference, layout, approvals and phone contracts, plus, per record charge - covers cost of computer time, output,	

operator time, and other output costs necessary to generate the report plus, development charge - covers costs to create report program, execute search, and/or manual search time by staff to assemble report. Costs include salaries, benefits, supervision and overhead **Note:** Fees not to exceed labor costs (wages/salary plus benefits) of the lowest-paid employee who could complete the task.	$50 $.05 first 100 parcels

DEMOLITION AND MOVING OF BUILDINGS FEES

Reason for Fee	*Amount of Fee*	*Reference*
Demolition of any minor building	$50	§ 103.02(B)
Demolition of any building not classified as a minor building	$150	§103.02(B)
For holding up, raising or moving any building or structure on the same lot	$50	§103.02(B)
For moving any minor building as defined herein to a different lot within the city over city streets	$50	§ 103.02(B)
For moving a manufactured home as defined by State Building Code Chapter 1350 Manufactured Homes, to a lot within the city or from outside of the city to a lot within the city	$75	§ 103.02(B)
For moving any building or structure non-stop through the city upon city streets (see exception - Section 446:15(e), County Roads	$75	§ 103.02(B)

and State Highways Exempt)		
For moving any building or structure out of the city	$75	§ 103.02(B)
For moving any building or structure, except any minor building, from one lot to another lot within the city	$250	§ 103.02(B)
For moving any building or structure, including any minor building, from outside of the city to a lot within the city	$250	§ 103.02(B)

FIRE HYDRANTS

Reason For Charge	*Amount of Fee*	*Reference*
Annual maintenance fee:		§ 100.59
one to three hydrants	$75 per hydrant	
each additional hydrant	$50 per hydrant	
Meter deposit and rental fee	Deposit of $750 and a $5 per day charge for rental during the first 30 days and $10 per day thereafter, with a minimum rental of $25	§ 100.64

FIRE PROTECTION AND PREVENTION SERVICE FEES

Reason for Fee	*Amount of Fee*	*Reference*
Fire inspection certificate	$45	
Fire inspection surcharge:		
High hazard	$250	
Large facilities (over 10,000 sq. ft.)	$0.14 per sq. ft. over 10,000 not to exceed $450	

Fire modification fines	$250 first offense	
	$500 second offense	
	$1,000 third offense	
Gas line encroachment	$1,000 per response	§§ 366.011 and 415.01
		§ 93.09
Hazardous materials	$300 per engine (each)	§§ 366.011 and 415.01
	$400 per aerial/ladder (each)	§ 93.09
and		
Other responses	$150 per utility (each)	
	Firefighters @$15 per hour (each)	
Apparatus rates are for two hours; After two hours, rates are per hour	Senior Chief officers @$50 per hour (each)	
	Inspectors @$30 per hour (each)	
	Disposables @cost + 10% (each)	

FIRE SUPPRESSION SYSTEMS/ALARM SYSTEM FEES

Reason for Fee	***Amount of Fee***	***Reference***
Permit for the installation and/or alteration of all fire suppression systems and/or alarm systems and all associated components thereof, including standpipes, water supply pipes, pumps, special suppression systems and dip tanks	Table 1-A Building Permit Fee Schedule	§ 103.02(B)
General fire/safety inspections	Initial Inspection $0	§ 93.09
	1st follow-up $0	

	2nd follow-up $100	
	3rd follow-up $150	
	4th follow-up $200	

Reason for Fee	*Amount of Fee*	*Reference*
Public school inspections	Initial inspection and two follow-up inspections $0.014/building sq. ft.	§ 299F.47
	Third or more follow-up inspections, each $0.005/building sq. ft.	§ 93.09
	Inspections are every three years.	
Charter school inspections	Initial inspection and two follow-up inspections $100	§ 299F.47
	Third or more follow-up inspections, each $ 50	§ 93.09
	Inspections are every three years.	
Hotel/motel inspections	Initial inspection and one follow-up inspection $435 each facility, plus:	§ 299F.46
	A per room charge:	§ 93.09
	1-18 rooms Exempt	
	19-35 rooms $6 each room	
	36-100 rooms $7 each room	
	Over 100 rooms $8 each room	
	Second or more follow-up inspections, each $225	
	Inspections are every three years.	

GAS FEES

Reason for Fee	*Amount of Fee*	*Reference*
Gas Piping		
Installation of gas piping	As established by Council resolution	103.02(A) and (B)

HEARING OFFICER FEE SCHEDULE

Hearing Officer Fee Schedule	
Per session (4 hour max.)	$150
Each time they are required to act upon a request for a subpoena or other such action involved in the process	$10

TABLE 1-B MECHANICAL PERMIT FEES

CITY OF BROOKLYN PARK 2003

Total Valuation	*Fee*
New single-family home heating and cooling	$200.00
$1.00 to $2,500.00	$50.00
$2,501.00 to $50,000.00	2% of valuation
$50,001.00 and up	$1,000 plus 1% of valuation in excess of $50,000.00

Other Inspections and Fees:		
1.	Inspections outside of normal business hours	$50.00 per hour (minimum charge-two hours)
2.	Reinspection fee assessed under provisions of Section 1300.0210	$50.00 per hour
3.	Inspections for which no fee is specifically indicated	$50.00 per hour (minimum charge-one hour)
4.	When submittal documents are required by Section 1300.0130, a plan review fee must be paid	The plan review fee shall be 10% of the

	~~.....~~	~~mechanical permit fee.~~
5.	Additional plan review required by changes, additions or revision to plan	$50.00 per hour (deferred submittals)

MECHANICAL PERMIT FEES

Value of Work	*Fee*	*Reference*
Per Table 1-B	Per Table 1-B	§ 103.02(A) and (B)

PLUMBING FEES

Reason for Fee	*Amount of Fee*	*Reference*
For installation of plumbing work	As established by Council resolution	§ 103.02(A) and (B)
Water Service, Supply and Distribution System		
Permit and inspection fee made at the time of applying for water services	$50	§§ 100.57 and 103.02
Making taps for all service pipes	$75	§ 100.58

TABLE 1-C PLUMBING PERMIT FEES

CITY OF BROOKLYN PARK 2003

Total Valuation	*Fee*	
New single-family home heating and cooling	$200.00	
$1.00 to $2,500.00	$50.00	
$2,501.00 to $50,000.00	2% of valuation	
$50,001.00 and up	$1,000 plus 1% of valuation in excess of $50,000.00	
Other Inspections and Fees:		
1.	Inspections outside of normal business hours	$50.00 per hour (minimum charge-two

		hours)
2.	Reinspection fee assessed under provisions of Section 1300.0210	$50.00 per hour
3.	Inspections for which no fee is specifically indicated	$50.00 per hour (minimum charge-one hour)
4.	When submittal documents are required by Section 1300.0130, a plan review fee must be paid	The plan review fee shall be 10% of the plumbing permit fee.
5.	Additional plan review required by changes, additions or revision to plan	$50.00 per hour (deferred submittals)

PRIVATE SEWER SYSTEM PERMIT FEES

Type of Work	*Fee*	*Reference*
New installation	$75	§ 99.81
Pumping	$15	§ 99.81
Abandonment or removal	$15	§ 99.81
Repair or modification	$75	§ 99.81
System inspection (i.e. review for mortgage, and the like)	$75	§ 99.81
Reinspection for private sewer systems and sump pumps and other clean water discharge devices	§ 30	§ 99.81

RECREATION AND PARK FEES

Recreation and Parks Fees	*2016*	*2017*
Picnic Pavilions		
200 person capacity	$150 + tax resident	$150 + tax resident
	$175 + tax non-resident	$175 + tax non-resident
80 - 150 person capacity	$75 + tax resident	$75 + tax resident
	$100 + tax non-resident	$100 + tax non-resident
	Refundable damage	Refundable damage

	deposit $300	deposit $300
60 person capacity	$50 + tax resident	$50 + tax resident
	$90 + tax non-resident	$90 + tax non-resident
	Refundable damage deposit $200	Refundable damage deposit $200
40 person capacity	$25 + tax resident	$25 + tax resident
	$60 + tax non-resident	$60 + tax non-resident
	Refundable damage deposit $100	Refundable damage deposit $100
Park Activity Buildings		
70 person capacity	$100 + tax resident	$100 + tax resident
	$125 + tax non-resident	$125 + tax non-resident
	Refundable damage deposit $300	Refundable damage deposit $300
20 person capacity	$30 + tax resident	$30 + tax resident
	$50 + tax non-resident	$50 + tax non-resident
	Refundable damage deposit $100	Refundable damage deposit $100
Athletic Fields:		
Soccer/Lacrosse Field	$30 game, $100/day - local youth athletic association	$30 game, $100/day - local youth athletic association
	$50 game, $200/day + tax- other groups	$50 game, $200/day + tax- other groups
Softball Field Events	$20 game, $80/day - local youth athletic association	$20 game, $80/day - local youth athletic association
	$30 game, $120/day + tax - other groups	$30 game, $120/day + tax - other groups
Baseball Field	$20 game, $80/day - local youth athletic association	$20 game, $80/day - local youth athletic association
	$30 game, $120/day + tax- other groups	$30 game, $120/day + tax- other groups
Neighborhood park: per field rate	$20/day + tax resident	$20/day + tax resident
	$25/day + tax non-resident	$25/day + tax non-resident
CAC Event & Meeting space: Gardenview Room *(Sunday - Thursday)* 250 person capacity	$350 + tax non-resident (civic & non-profit)	$350 + tax non-resident (civic & non-profit)
	$350 + tax resident (private & business)	$350 + tax resident (private & business)
	$400 + tax non-resident	$400 + tax non-resident

	(private & business)	(private & business)
CAC Event & Meeting space: Gardenview Room *(Fri. - 10 a.m. - 12:30 a.m.)* 250 person capacity	$600 + tax non-resident (civic/non-profit)	$600 + tax non-resident (civic/non-profit)
	$600 + tax resident (private & business)	$600 + tax resident (private & business)
	$750 + tax non-resident (private & business)	$750 + tax non-resident (private & business)
	$100 off rental fee Nov. - Feb.	$100 off rental fee Nov. - Feb.
CAC Event & Meeting space: Gardenview Room *(Sat. - 10 a.m. - 12:30 a.m.)* 250 person capacity	$700 + tax non-resident (civic/non-profit)	$700 + tax non-resident (civic/non-profit)
	$700 + tax resident (private & business)	$700 + tax resident (private & business)
	$850 + tax non-resident (private & business)	$850 + tax non-resident (private & business)
	$100 off rental fee Nov. - Feb.	$100 off rental fee Nov. - Feb.
CAC Event & Meeting space: Community Room & Gazebo *(Sat. - 10 a.m. - 12:30 p.m.)* 250 person capacity	$1050 non-resident (civic/non-profit) $900 resident (private & business)	$1050 non-resident (civic/non-profit)
		$900 resident (private & business)
CAC Event & Meeting space: Grand Room (3 rooms) *(Sunday - Thursday)* 375 person capacity	$550 + tax non-resident (civic/non-profit)	$550 + tax non-resident (civic/non-profit)
	$550 + tax resident (private & business)	$550 + tax resident (private & business)
	$600 + tax non-resident (private & business)	$600 + tax non-resident (private & business)
CAC Event & Meeting space: Grand Room (3 rooms) *(Fri. - 10 a.m. - 12:30 a.m.)* 375 person capacity	$700 + tax non-resident (civic/non-profit)	$700 + tax non-resident (civic/non-profit)
	$700 + tax resident (private & business)	$700 + tax resident (private & business)
	$800 + tax non-resident (private & business)	$800 + tax non-resident (private & business)
	$100 off rental fee Nov. - Feb.	$100 off rental fee Nov. - Feb.
CAC Event & Meeting space: Grand Room (3	$800 + tax non-resident (civic/non-profit)	$800 + tax non-resident (civic/non-profit)
	$800 + tax resident (private & business)	$800 + tax resident (private & business)

rooms) *(Sat. - 10 a.m. - 12:30 a.m.)* 375 person capacity	$950 + tax non-resident (private & business) $100 off rental fee Nov. - Feb	$950 + tax non-resident (private & business) $100 off rental fee Nov. - Feb
CAC Event & Meeting space: Grand Room 1 and 2 (2 rooms) 250 person capacity	$130/hr + tax non-resident (civic/non-profit)	$130/hr + tax non-resident (civic/non-profit)
	$130/hr + tax resident (private & business)	$130/hr + tax resident (private & business)
	$200/hr + tax non-resident (private & business)	$200/hr + tax non-resident (private & business)
CAC Event & Meeting space: Grand Room 1 (1 room) 120 person capacity	$60/hr + tax non-resident (civic/non-profit)	$60/hr + tax non-resident (civic/non-profit)
	$60/hr + tax resident (private & business)	$60/hr + tax resident (private & business)
	$80/hr + tax non-resident (private & business)	$80/hr + tax non-resident (private & business)
CAC Event & Meeting Space: Senior Center (3 rooms) & Gazebo *(Sat. 10 a.m. - 12:30 p.m.)* 375 person capacity	$1150 non-resident (civic/non-profit) $1000 resident	$1150 non-resident (civic/non-profit) $1000 resident
CAC Meeting space: Conference Room 12 person capacity	$25/hr + tax non-resident (civic/non-profit)	$25/hr + tax non-resident (civic/non-profit)
	$25/hr + tax resident (private & business)	$25/hr + tax resident (private & business)
	$35/hr + tax non-resident (private & business)	$35/hr + tax non-resident (private & business)
CAC Meeting space: Arena 1 Meeting Room 26 person capacity	$25/hr + tax non-resident (civic/non-profit)	$25/hr + tax non-resident (civic/non-profit)
	$25/hr + tax resident (private & business)	$25/hr + tax resident (private & business)
	$35/hr + tax non-resident (private & business)	$35/hr + tax non-resident (private & business)
Zanewood Meeting & Event Space Classroom A and B 40 person capacity	$50/hr + tax resident	$50/hr + tax resident
	$65/hr + tax non-resident	$65/hr + tax non-resident
	$100 refundable damage deposit	$100 refundable damage deposit
Zanewood Meeting & Event Space	$50/hr + tax resident	$50/hr + tax resident

Multi-purpose room *(Monday - Friday rates)*	$65/hr + tax non-resident	$65/hr + tax non-resident
75 person capacity with round tables/chairs	$100 refundable damage deposit	$100 refundable damage deposit
Zanewood Meeting & Event Space	$300/4 hour rental + tax resident	$300/4 hour rental + tax resident
Multi-purpose room *(Saturday & Sunday rates)*	$375/4 hour rental + tax non-resident	$375/4 hour rental + tax non-resident
75 person capacity with round tables/chairs	$100 refundable damage deposit $50 each additional hour	$100 refundable damage deposit $50 each additional hour
Ice Arenas: hourly ice time rate	$190 per hour **prime time fee* *(Sept. 1 - Mar. 30)*	$215 per hour **prime time fee* *(Sept. 1 - Mar. 30)*
Gazebo	$275 + tax per event $325 (non-resident)	$275 (resident) $325 (non-resident)
Facility use fee Athletic Association: per person	$2/person (resident) $5/person (non-resident)	$2/person (resident) $5/person (non-resident)
Admission fees: Open skate	$4 adults $3 children & seniors $11 family $3 skate rental	$4 adults $3 children & seniors $11 family $3 skate rental
Non-resident recreation program fee	20% added to class fee if under $99 and $20 added to class fee if over $100	20% added to class fee if under $99 and $20 added to class fee if over $100
Garden Plots	$50 per plot	$50 per plot

RECREATION AND PARK FEES -- FACILITY USER DEFINITIONS

RESIDENT	Any person who **maintains a residential address** in the City of Brooklyn Park. An address to a Brooklyn Park post office box number only is not applicable to obtain resident stature.
NON-RESIDENT	Any person who maintains a residential address outside the Brooklyn Park city limits.
	Includes civic organization, charitable groups and

CIVIC GROUP	character building organization devoted to the betterment of the community by offering community oriented social, educational, recreational and/or cultural enrichment opportunities.
NON-PROFIT GROUP	Includes any group/organization that legally qualifies for a not-for-profit status and files as such with the Internal Revenue Service. Proof of status may be required upon processing a reservation. Includes churches, political parties, elected officials and others listed within the Community Center policies.
COMMERCIAL/ BUSINESS	Includes groups that operate for profit or the purpose of promotion or advertisement.
PRIVATE	An individual or group using the facility for personal non-public or private purpose.

Edinburgh USA 2017 Rates		
Rounds	***2016***	***2017***
	Every Day	***Every Day***
Patron card holder	$42 + tax	$42 + tax
Resident	$48 + tax	$48 + tax
Non-resident	$57 + tax	$57 + tax
Sr. rate	$43 + tax	$43 + tax
9-hole league	$25 + tax	$25 + tax
Daily Specials		
Monday w/cart		$46 + tax
Tuesday w/cart	$49 + tax	$55 + tax
Twilight	$32 + tax	$30 + tax
Super Twilight		$30 + tax
Junior	$26 + tax	$25 + tax
18-hole cart fee	$34 + tax	$19 + tax
Twilight/9-hole power cart	$18 + tax	$14 + tax
Rounds		
Pull cart	$7 + tax	$7 + tax
Patron cards	$90 + tax	$90 + tax
Patron cards/before April	$85 + tax	$85 + tax

Range tokens	$5 + tax	$5 + tax
Range key	$120 + tax	$120 + tax
Jr. Season Pass	$300 + tax	$300 + tax
SAC Season Pass	$2,100 unlimited $1,500 (50 rounds) $800 (25 rounds) $380 (10 rounds)	$2,100 unlimited $1,500 (50 rounds) $800 (25 rounds) $380 (10 rounds)

BROOKLAND EXECUTIVE NINE HOLE GOLF COURSE 2016 RATES				
ROUNDS	***2011***		***2016***	
	1st ROUND	***2nd ROUND***	***1st ROUND***	***2nd ROUND***
Adults				
Sr.	$13.00 + tax	$ 9.00 + tax	$14.00 + tax	$ 5.00 + tax
Jr.	12.00 + tax	8.00 + tax	13.00 + tax	5.00 + tax
Gas Cars	11.00 + tax	7.00 + tax	12.00 + tax	5.00 + tax
Clubs	14.00 + tax	14.00 + tax	14.00 + tax	14.00 + tax
Rental -	5.00 + tax	2.50 + tax	4.50 + tax	4.00 + tax
Free	4.00 + tax	2.00 + tax		
Pull Cart				

2016	
Patron Card - Annual	$55 + tax
Adult Patron Round	$8 + tax
Sr. Patron Round	$7 + tax
Jr. Patron Round	$3 + tax
Footgolf	$9 + tax
Footgolf Replay Round	$6 + tax
Soccer Ball Rental	$3 + tax

RECYCLING SERVICE CHARGES

Quarterly Recycling Service Charges			
Year	***Single-Family through 8 Residential Unit***	***Multi-Family Units***	***Reference***

January 1, 2010	$8.10 per unit per quarter	$5.70 per unit per quarter	§ 98.39
January 1, 2011	$8.40 per unit per quarter	$6.00 per unit per quarter	§ 98.39
January 1, 2012	$8.70 per unit per quarter	$6.30 per unit per quarter	§ 98.39

SANITARY SEWER RATES AND CHARGES

QUARTERLY SANITARY SEWER RATES AND CHARGES				
Year	***Multi-Family, Commercial, Industrial and Institutional***	***Residential (Individually Metered)***	***Residential (Not Metered)***	***Reference***
May 1, 2016	$5.80 per 5/8" meter equivalent plus $2.95 per 1,000 gallons used	$5.80 per meter plus $2.95 per 1,000 gallons used	$41.50 per quarter	§ 99.75
January 1, 2017	$6.05 per 5/8" meter equivalent plus $3.15 per 1,000 gallons used	$6.05 per meter plus $3.15 per 1,000 gallons used	$44.00 per quarter	§ 99.75
January 1, 2018	$6.30 per 5/8" meter equivalent plus $3.35 per 1,000 gallons used	$6.30 per meter plus $3.35 per 1,000 gallons used	$46.50 per quarter	§ 99.75
January 1, 2019	$6.55 per 5/8" meter equivalent plus $3.55 per 1,000 gallons used	$6.55 per meter plus $3.55 per 1,000 gallons used	$49.00 per quarter	§ 99.75
Meter equivalents shall be as defined by Water Rates (AWWA No. M1) as published by American Water Works Association.				
MISCELLANEOUS FEES				
Type of Work		***Fee***	***Reference***	
Installation of water meters				

on non- metered residential properties	$50	§ 99.75
Surcharge for property owners who are not in compliance with regulations or who have refused to allow their property to be inspected	$100 per month	§ 99.75
Sewer connection charge	$150	§ 99.76
Sewer connection permit and inspection fee	$50 for residential $75 for commercial or industrial	§§ 99.77 and 103.02
Late charge for sewer billings not paid within 20 days after the billing date	10% of unpaid balance or a minimum of $1	§ 99.79
Administrative costs incurred by city in collecting of delinquent charges	$50	§ 99.80

STORM SEWER RATES AND CHARGES

Storm Sewer Rates and Charges			
QUARTERLY STORM SEWER RATES			
Year	***Land Use Class***	***Quarterly Charge***	***Reference***
April 1, 2008	Single Family Residential	$6.40 per unit	§ 108.04
	Townhouse/Two Family Residential	$4.40 per unit	§ 108.04
	Multiple Family Residential	$2.30 per unit	§ 108.04
	Business	$39.70 per acre	§ 108.04
	Industrial	$45.40 per acre	§ 108.04
	School/Church	$18.90 per acre	§ 108.04
January 1, 2009	Single Family Residential	$6.80 per unit	§ 108.04
	Townhouse/Two Family		

	Residential	$4.60 per unit	§ 108.04
	Multiple Family Residential	$2.40 per unit	§ 108.04
	Business	$41.65 per acre	§ 108.04
	Industrial	$47.60 per acre	§ 108.04
	School/Church	$19.85 per acre	§ 108.04
January 1. 2010	Single Family Residential	$7.20 per unit	§ 108.04
	Townhouse/Two Family Residential	$4.75 per unit	§ 108.04
	Multiple Family Residential	$2.55 per unit	§ 108.04
	Business	$43.75 per acre	§ 108.04
	Industrial	$50.00 per acre	§ 108.04
	School/Church	$20.85 per acre	§ 108.04
January 1, 2011	Single Family Residential	$7.60 per unit	§ 108.04
	Townhouse/Two Family Residential	$5.00 per unit	§ 108.04
	Multiple Family Residential	$2.65 per unit	§ 108.04
	Business	$45.95 per acre	§ 108.04
	Industrial	$52.50 per acre	§ 108.04
	School/Church	$21.90 per acre	§ 108.04

Storm Sewer Rates and Charges			
QUARTERLY STORM SEWER RATES			
Year	***Land Use Class***	***Quarterly Charge***	***Reference***
January 1, 2012	Single Family Residential	$8.00 per unit	§ 108.04
	Townhouse/Two Family Residential	$5.25 per unit	§ 108.04
	Multiple Family Residential	$2.80 per unit	§ 108.04
	Business	$48.25 per acre	§ 108.04
	Industrial	$55.15 per acre	§ 108.04
	School/Church	$22.95 per acre	§ 108.04

STREET/SIGNAL LIGHTING RATES AND CHARGES

Street/Signal Lighting Rates and Charges			
QUARTERLY STREET/SIGNAL LIGHTING RATES AND CHARGES			
Year	***Land Use Class***	***Quarterly Charge***	***Reference***
April 1, 2008	Single Family Residential	$6.75 per unit	§ 109.03
	Townhouse/Two Family Residential	$4.80 per unit	§ 109.03
	Multiple Family Residential	$2.40 per unit	§ 109.03
	Business/Industrial/School/Church	$0.10 per street front lineal foot	§ 109.03
January 1, 2009	Single Family Residential	$7.90 per unit	§ 109.03
	Townhouse/Two Family Residential	$5.50 per unit	§ 109.03
	Multiple Family Residential	$2.80 per unit	§ 109.03
	Business/Industrial/School/Church	$0.12 per street front lineal foot	§ 109.03
January 1, 2010	Single Family Residential	$8.80 per unit	§ 109.03
	Townhouse/Two Family Residential	$6.05 per unit	§ 109.03
	Multiple Family Residential	$3.05 per unit	§ 109.03
	Business/Industrial/School/Church	$0.13 per street front lineal foot	§ 109.03
January 1, 2011	Single Family Residential	$9.20 per unit	§ 109.03
	Townhouse/Two Family Residential	$6.40 per unit	§ 109.03
	Multiple Family Residential	$3.20 per unit	§ 109.03
	Business/Industrial/School/Church	$0.14 per street front lineal foot	§ 109.03
January 1, 2012	Single Family Residential	$9.60 per unit	§ 109.03
	Townhouse/Two Family Residential	$6.70 per unit	§ 109.03
	Multiple Family Residential	$3.35 per unit	§ 109.03

	Business/Industrial/School/Church	$0.15 per street front lineal foot	§ 109.03
	1. Decorative street lights increase quarterly charge by 50 per cent for single family and townhouse residential.		
	2. Private street lights (not parking lot lights) decrease quarterly charge by 50 per cent for single family and townhouse residential.		
	3. Standard street lights are cobra head fixture type with fiberglass or wood poles.		
	4. Minimum charge for Business/Industrial to be not less than Single Family Residential rate.		

SUBDIVISION AND ZONING FEES AND CHARGES

Application	*Fee*	*Escrow*	*Total Due Upon Application*
Administrative Permits Event permits (residential) Event permits (nonresidential) Fence permits (critical area overlay) Larger entertainment events including music event, dances, parades, and the like	 $30 $50 Based on UBC $250	 $0 $0 $0	 $30 $50 Based on UBC
Amended subdivision	$400	$1,000	$1,400
Amendment to a Conditional Use Permit, General Plan of Development (PCDD) or Development Plan (PUD)	$400	$1,000	$1,400
Comprehensive Plan Amendment	$400	$2,000	$2,400
Concept Plan Review	$350	$500	$850
Conditional Use Permit	$400	$2,000	$2,400
Construction of permanent, subdivision identification sign at the major entry point(s)	$50	$0	$50
Development Plan - Neighborhood Plan	$400	$2,000	$2,400
Environmental Review		$5,000	$5,000

General Plan of Development	$400	$2,000	$2,400
Interim use permit for reuse of agricultural buildings	$150	$500	$650
Interim use permit for detached accessory buildings	$150	$500	$650
Park dedication fees:			Paid with recording of plat
Residential (10% land dedication)			
Low Density Residential	$4,600 per unit	$0	$4,600 per unit
Medium Density Residential	$4,600 per unit	$0	$4,600 per unit
High Density Residential	10% average land valuation	$0	
Commercial (5% land dedication)	$8,000 per acre	$0	$8,000 per acre
Industrial (5% land dedication)	$8,000 per acre	$0	$8,000 per acre
Rezoning or Zoning Ordinance Text Amendment	$500	$2,000	$2,500
Site Plan and Building Review and Inspections for relocating structures	$50	$600	$650
Site Plan Review	$450	$2,000	$2,450
Subdivision	$500	$2,000	$2,500
Variance to Subdivision Ordinance (Waiver)	$350	$500	$850
Waiver of Platting (Duplex Split)	$100	$350	$450
Zoning letter preparation	$50		$50
Zoning/Sign Ordinance Variance	$200	$0	$200

WATER ACCESS CHARGES

Year	*Amount of Charge*	*Reference*
June 1, 2011	$1,675	§ 100.63
June 1, 2012	$1,725	§ 100.63
June 1, 2013	$1,775	§ 100.63
June 1, 2014	$1,825	§ 100.63
June 1, 2015	$1,875	§ 100.63
WAC total charge is calculated utilizing the same unit charge multiplier as per the Metropolitan Council Environmental Services (MCES) Sewer Availability Charge (SAC) Procedure Manual.		

WATER RATES AND CHARGES

QUARTERLY WATER RATES AND CHARGES				
Year	*Multifamily, Commercial, Industrial and Institutional*	*Residential (Individually Metered)*	*Irrigation (Separately Metered)*	*Reference*
January 1, 2012	$5.10 per 5/8" Meter Equivalent plus $1.75 per 1,000 gallons used	$5.10 per 5/8" Meter Equivalent plus $1.75 per 1,000 gallons used for the first 40,000 gallons and $2.70 for each 1,000 gallons used in excess of 40,000 and $3.45 for each 1,000 gallons used in excess of 80,000	$5.10 per 5/8" Meter Equivalent plus $2.70 per 1,000 gallons used	§ 100.55
	$5.25 per 5/8"	$5.25 per 5/8" Meter Equivalent plus $1.80 per 1,000 gallons used for the first 40,000	$5.25 per 5/8"	

January 1, 2013	Meter Equivalent plus $1.80 per 1,000 gallons used	gallons and $2.75 for each 1,000 gallons used in excess of 40,000 and $3.50 for each 1,000 used in excess of 80,000	Meter Equivalent plus $2.75 per 1,000 gallons used	§ 100.55
January 1, 2014	$5.40 per 5/8" Meter Equivalent plus $1.85 per 1,000 gallons used	$5.40 per 5/8" Meter Equivalent plus $1.85 per 1,000 gallons used for the first 40,000 gallons and $2.80 for each 1,000 gallons used in excess of 40,000 and $3.55 for each 1,000 used in excess of 80,000	$5.40 per 5/8" Meter Equivalent plus $2.80 per 1,000 gallons used	§ 100.55
January 1, 2015	$5.55 per 5/8" Meter Equivalent plus $1.90 per 1,000 gallons used	$5.55 per 5/8" Meter Equivalent plus $1.90 per 1,000 gallons used for the first 40,000 gallons and $2.85 for each 1,000 gallons used in excess of 40,000 and $3.60 for each 1,000 used in excess of 80,000	$5.55 per 5/8" Meter Equivalent plus $2.85 per 1,000 gallons used	§ 100.55
Meter equivalents are as defined by Water Rates (AWWA No. M1) as published by American Water Works Association.				
MISCELLANEOUS RATES AND CHARGES				
Reason for Charge		***Amount of***	***Reference***	

	Charge	
Late charge for water billings not paid within 20 days after the billing date	10% of the unpaid balance or a minimum of $1	§ 100.55
Administrative costs incurred by city in collecting delinquent charges	$50	§ 100.55
Reinstating water service after turn-off for delinquency	$40	§ 100.55
Service charge imposed if payment is not received by the shut-off deadline for payments	$25	§ 100.55

WATER MAINTENANCE AND FIRE PROTECTION CHARGES

Quarterly Charges Against Properties Not Connected to the Municipal Water System	***Amount of Charge***	***Reference***
Single and double residences (each unit)	$10	§ 100.55 (E)
Service stations	$15	§ 100.55 (E)
Restaurants, cafes and churches	$20	§ 100.55 (E)
Commercial properties having a floor area of less than 1,000 square feet	$15	§ 100.55 (E)
Commercial properties having a floor area of from 1,000 to 5,000 square feet	$30	§ 100.55 (E)
Commercial properties having a floor area of over 5,000 square feet	$50	§ 100.55 (E)
Multiple residences - three or more units (each unit)	$10	§ 100.55 (E)
Schools - elementary, each	$60	§ 100.55 (E)
Schools - junior and senior high, each	$100	§ 100.55 (E)

Charges against such properties not connected to the municipal water systems and not listed above are made on the basis of the meter size which would be needed if the property were to be connected to the municipal water system; based upon sizes of meters installed on similar properties elsewhere in the city		
Deposit for disconnecting, testing and repair of a meter	$50	§ 100.60
Fee for disconnecting a water meter or connecting a meter	$50	§ 100.61

WATER METERS

Reason for Charge	*Amount of Charge*		*Reference*
Deposit for disconnecting, testing and repair of a meter	5/8 " to 1" meters	$ 50	§ 100.60
	1½" to 2" meters	$250	
	3" to 8" meters	$500	
Deposit for a temporary meter	$350		§ 100.65
Fee for disconnecting a water meter or connecting a meter	$50		§ 100.61

References to Minnesota Rules

References to 1972 Code

References to Ordinances

REFERENCES TO MINNESOTA STATUTES

M.S. Section	*Code Section*
10A.14	112.300
Chapter 12	36.01
Chapter 13	93.40, 93.57
13.01 et seq.	41.03
15.73	102.22
15.99	152.542

16B.59 - 16B.75	103.01
16B.62, Subd. 1	103.01
16B.65, Subd. 1	103.01
16B.70	103.01
16B.665	Appendix
18.011 - 18.024	97.03
18.75 - 18.88	97.03
18.77, Subd. 8	97.02, 97.03
18.771(e)	97.02
Chapter 28A	114.01
69.01	98.30
84.81 - 84.88	73.30, 73.40, 73.99
Chapter 89	97.03
89.63(B)	97.30
89.001	97.01
97A.041	92.36
97B.091	73.39, 73.40
Chapter 103F	152.491
Chapter 103G	152.512, 152.513
103G.005, Subd. 14	152.513
103G.005, Subd. 15	153.06
103G.221 et seq.	152.008, 153.06
103G.222 - .2373	153.03
103G.245	152.513
115A.03, Subd. 11	98.30
115A.03 Subd. 12	98.30
115A.46	98.30
116.07	90.25
116.46 through 116.491	93.37
116.48	93.54
116.491 Subd. 1	93.36, 93.62
Chapter 116G	151.026
Chapter 144.05	111.02
144.391	122.01
144.1222	105.06
144.1222, Subd. 1, 1a	105.06
Chapter 145A	94.06, 114.01

Chapter 146B	123.02, 152.008, 152.342
152.01, Subd. 5	135.08
152.01 et seq.	112.003, 117.49
152.02	135.01
152.02, Sched. I - V	94.01
Chapter 157	105.06, 114.02, 117.25
157.15, Subd. 9	114.03, 152.008
157.15, Subd. 12.a, 13, and 14	114.03
157.16	105.06, 114.02, 117.25
161.45	102.22, 102.43
Chapter 168	152.343, 152.344
Chapters 168 - 171	73.30
Chapter 168A	152.343, 152.344
Chapter 168B	90.15, 90.18
168B.07	90.18
168B.08	90.18
168B.09, Subd. 2	90.15
Chapter 168C	73.16
Chapter 169	71.01, 95.07
169.01	90.16, 152.008
169.041	90.16, 90.18
169.06	151.086
169.345, Subd. 3	72.17
169.345, Subd. 2.	72.17
211B.045	150.06
216B.02	102.22
216B.02, Subd. 4	102.22
216B.02, Subd. 6	102.22
216B.36	102.43
Chapter 216D	102.25
216D.01 et seq.	102.35, 102.45
216D.04, Subd. 3	102.22
221.81	103.02
222.37	102.43
237.16	102.20
237.162	102.20, 102.22, 102.43
237.162, Subd. 4	102.22

237.163	102.20, 102.22, 102.43
237.163, Subd. 2(b)	102.21
237.163, Subd. 3	102.22
237.163, Subd. 4(c)	102.38
237.163, Subd. 6	102.50
237.163, Subd. 6(b)(4)	102.28
237.79	102.20
237.81	102.20
238.02, Subd. 3	102.22
238.084	102.43
238.086	102.20
243.166	117.49
Chapter 260B	112.003
260C. et seq.	117.49
260.185	132.99
299C.66 - 299C.71	117.52
300.03	102.43
303.06	119.07
Chapter 306	103.01
Chapter 308A	102.22
325J.04, Subd. 2	119.11
326B.101 - 126B.194	106.02
327.10 - 327.131	117.25
327.70 - 327.76	117.25
Chapter 329	119.32
333.01	119.07
340:11-7	Appendix
Chapter 340A	112.003, 112.041
340A.22	112.400, 112.401, 112.403, 152.008
340A.101	112.041, 112.059
340A.101, Subd. 9	152.008
340A.101, Subd. 16	152.008
340A.301, Subd. 6b	152.008
340A.301, Subd. 6(c), (i), (j)	112.202
340A.301, Subd. 7	112.210

340A.409	112.001, 112.300
340A.409, Subd. 1 - 3a	112.300
340A.409, Subd. 4	112.001
340A.412, Subd. 10	112.041, 112.064
340A.419	112.049
340A.503	34.04
340A.504, Subd. 3(d)	112.300
340A.504, Subd. 4	112.210
340A.701	117.49
340A.702	117.49
340A.703	117.49
343.20 - 343.36	92.15
344.02, Subd. 1(a) - (d)	152.008
Chapter 346	92.01
346.37	92.15
347.31 - 347.40	92.15
347.50	92.04, 92.25
347.50, Subd,1	92.26
347.51	92.02
347.51, Subd. 2	92.26
347.51, Subd. 2a	92.26
347.51, Subd. 3(a)	92.26
347.51, Subd. 5	92.25, 92.26
347.52	92.04, 92.16
347.54	92.26
347.541	92.26
347.542	92.28
347.56	117.49
Chapter 349	112.041
349.11 through 349.22	113.61, 113.62, 113.63, 113.64
349.11 through 349.23	113.60
349.213	113.60, 113.63
364.01 et seq.	41.03
364.03, Subd. 2	119.07, 124.08, 124.11
364.03, Subd. 3	124.08, 124.11
412.231 and 609.034	10.99
415.02	Adopting Ordinance

415.021	Adopting Ordinance
Chapter 429	94.05, 94.15, 98.38, 106.02, 109.01, 111.02
429.081	153.08
429.101	94.07, 106.02, 111.02
429.101, Subd. 1	106.02, 111.02
444.075	108.01
444.075, Subd. 3	99.80, 100.55
Chapter 453	102.22
Chapter 453A	102.22
Chapter 462	152.491
462.351 through 462.364	152.007
462.352, Subd. 12	151.003
462.358	151.001
462.358, Subd. 2A	151.085
462.358, Subd. 4b	151.011
462.3593	152.264
Chapter 463	94.15
463.17, Subd. 2	111.02
471.195	90.01
471.62	10.19
Chapter 473	99.30, 99.35
Chapter 473C	99.83
473.851 - 473.868	151.002
477A.018	34.35
505.02	151.043
505.02	151.043, 151.086
505.03, Subd. 1	151.044, 151.045, 151.058
505.08, Subd. 1	151.040
515A.1-106	152.294
Chapter 606	112.003
609.02, Subd. 6	95.01, 95.03
609.18 through 609.215	112.003
609.226	117.49
609.229	112.003, 117.49
609.26, Subd. 1(8)	117.49
609.281 through 609.284	112.003

609.29 through 609.352	111.02
609.321, Subd. 9	112.003, 117.49
609.324	112.003, 117.49
609.33	117.49
609.342 through 609.3451	112.003
609.415	37.05
609.50	112.003, 117.49
609.66 et seq.	112.003, 117.49
609.68	94.01
609.71	112.003, 117.49
609.713	112.003, 117.49
609.715	112.003, 117.49
609.72	112.003, 117.49
609.75 through 609.76	112.003, 117.49
609.78	112.003, 117.49
609.903	112.003, 117.49
617.23 through 617.229	111.02
617.298, Subd. 2	113.46
624.714	136.06, 136.10
624.715	136.06, 136.10
1234.05 through 1234.09	152.182
Ch. 1505	97.45

REFERENCES TO MINNESOTA RULES

Minn. Rules	*Code Section*
1300.0130	Appendix
1300.0160	Appendix
1300.0210	Appendix
1720.1560	92.15
Ch. 4625	117.25
Ch. 4626	114.03
4626.0010 et seq.	114.09
4626.0010 - 4626.2025	114.02
4717.0150 - 4717.3975	105.06

4720.51000, Subp. 13	153.07
Ch. 4725.4350	152.514
6120.5000 - 6120.6200	152.053, 152.515, 152.518, 152.520
Ch. 7030	152.186
Ch. 7035	90.15
Ch. 7080.2270	152.514
Ch. 7105	93.37
Ch. 7150	93.37
7103.0120, Subp. 2	93.53
7103.0120, Subp. 6	93.53
7400.0100 - 7400.6000	152.343, 152.344
7515.1100	112.211
7819.0050 et seq.	102.20
7819.1000, Subp. 3	102.28
7819.1100	102.22, 102.32, 102.37
7819.1250	102.26, 102.48
7819.3000	102.32
7819.3100	102.44
7819.3200	102.47
7819.3300	102.49
7819.4000	102.42
7819.4100	102.42
7819.5000	102.37, 102.44
7819.5100	102.37, 102.44
7819.5100, Subd. 2	102.44
7819.9900 - 7819.9950	102.22

REFERENCES TO 1972 CODE OF ORDINANCES

1972 Code Section	*2000 Code Section*
100:00	30.15
100:03	30.16
100:09	30.17
100:12	30.18

100:15	30.19
100:21	30.20
100:24	30.21
100:30	30.22
100:33	30.23
100:42	30.24
100:51	30.25
100:54	30.26
100:57	30.27
100:69	30.28
100:72	30.29
100:78	30.30
100:81	30.31
110:00	35.01
110:05	35.02
115:00	30.01
120:00	38.15
120:05	38.16
120:10	38.17
120:15	38.18
120:20	38.19
120:25	38.20
120:30	38.21
120:35	38.22
130:00	34.01
130:05	34.02
130:10	34.03
130:15	34.05
130:25	34.06
130:30	34.07
130:35	34.08
130:40	34.09
205:00	31.15
205:05	31.16
205:10	31.17
205:15	31.18
205:20	31.19
215:00	36.01

215:05	36.02
215:10	36.03
215:15	36.04
215:20	36.05
215:25	36.06
220:10	38.01
225:00	32.01
225:05	32.02
225:10	32.03
225:15	32.04
225:20	32.05
225:25	32.06
225:30	32.07
225:40	32.08
225:45	32.09
225:46	32.10
225:47	32.11
225:50	32.12
225:55	32.13
225:60	93.03
225:65	93.26
225:65	93.25
225:65	93.27
225:65	93.28
225:70	93.02
225:72	93.01
225:74 - 225:79	93.04
225:80	93.05
225:82	93.06
225:84	93.07
225:86	93.08
225:88	93.09
225:100	93.99
225:106	93.10
225:108	93.11
225:110	93.12
230:00	31.30

230:05	31.30
230:10	31.31
230:15	31.32
240:00	31.01
240:05	31.02
245:00	31.45
245:05	31.46
245:10	31.47
245:15	31.48
245:20	31.49
250:00	31.60
250:10	31.61
250:15	31.62
265:00	33.02
265:05	33.03
270:00	33.15
270:05	33.16
270:10	33.17
270:15	33.18
270:20	33.19
270:25	33.20
270:30	33.21
285:00	34.21, 34.22
285:00	34.20
285:10	34.23
285:15	34.24
285:20	34.25
285:25	34.26
285:30	34.27
285:35	34.28
285:40	34.29
285:45	34.30
285:50	34.31
285:55	34.32
285:60	34.33
285:65	34.34
285:70	34.35

285.75	34.36
290:00	31.75
290:05	31.76
290:10	31.77
290:15	31.78
290:20	31.79
315:00	103.01
315.60	103.03
315.75	103.04
315.80	103.05
323:00	103.75
323:10	103.76
323:15	103.77
323:20	103.78
323:25	103.79
340:00	118.01
340:05	118.02
340:10	118.03
340:15	118.04
340:20	118.05
340:25	118.06
340:30	118.07
340:35	118.08
340:40	118.09
345:00	151.001
345:02	151.002
345:04	151.003
345:06	151.004
345:08	151.005
345:10	151.006
345:11	151.007
345:13	151.025
345:16	151.026
345:20	151.027
345:22	151.040
345:25	151.041
345:28	151.042
345:31	151.043

345:34	151.044
345:37	151.045
345:40	151.046
345:43	151.055
345:46	151.056
345:49	151.057
345:52	151.058
345:55	151.059
345:58	151.060
345:59	151.061
345:61	151.070
345:61	151.071
345:64	151.085
345:64	151.086
345:67	151.087
345:68	151.088
345:70	151.089
345:73	151.090
345:76	151.091
345:79	151.092
345:82	151.008
345:85	151.100
345:86	151.101
345:87	151.102
345:88	151.009
345:91	151.010
345:92	151.011
345:93	151.012
345:94	151.013
356:00	150.01
356:05	150.02
356:10 - 356:15	150.03
356:20	150.04
356:25	150.05
356:40	150.07
356.30	150.30
356.30	150.27

356.30	150.26
356.30	150.28
356.30	150.29
356.30	150.31
356.30	150.25
356.35	150.06
356.45	150.08
356.50	150.09
356.55	150.10
356.60	150.11
356.65	150.12
356.70	150.13
356.75	150.14
356.76	150.15
400:00	110.01
400:03	110.02
400:06	110.03
400:09	110.03
400:12	110.03
400:15	110.03
400:18	110.04
400:21	110.05
400:24	110.06
400:27	110.07
400:30	110.08
400:33	110.09
400:36	110.10
400:39	110.11
400:42	110.12
400:45	110.13
400:48	110.14
400:51	110.15
400:54	110.16
400:57	110.17
400:60	110.18
405:01	73.15
405:40	73.16

405:45	73.17
405:50	73.18
415:00	92.01
415:03	92.35
415:04	92.36
415:06	92.37
415:09	92.38
415:12 - 415:15	92.02
415:18	92.03
415:21	92.04
415:23	92.05
415:24	92.06
415:25	92.08
415:26	92.09
415:27	92.10
415:28	92.11
415:30	92.12
415:33	92.13
415:36	92.14
415:38	92.16
415:39	92.17
415:42	92.18
415:45	92.19
415:48	92.20
415:54	92.21
415:57	92.22
415:75	92.23
415:76	92.24
415:245	92.07
422:00	111.01
422:05	111.02
422:10	111.03
422:15	111.04
422:20	111.05
422:25	111.06
422:30	111.07
422:35	111.08

432:40	111.09
426:00	113.40
426:05	113.41
426:10	113.42
426:15	113.43
426:20	113.44
426:25	113.45
426:30	113.46
426:35	113.47
426:40	113.48
426:45	113.49
426:50	113.50
432:00	105.01
432:02	105.02
432:05	105.03
432:10	105.04
435:00	98.01
435:05	98.02
435:10	98.03
435:15	98.04
435:25	98.05
435:30, 435:40	98.06
435:45	98.07
435:46	98.08
435:47	98.09
435:50	98.10
435:55	98.11
435:60	98.12
435:65	98.13
435:70	98.14
435:75	98.15
435:80	98.16
435:85	98.17
437:00	98.30
437:05	98.31
437:10	98.32
437:15	98.33
	98.34, 98.35, 98.36, 98.37,

437:20	98.99
437:25	98.38
437:30 - 437:65	98.39
455:00	117.40
455:05	117.41
455:10	117.42
455:15	117.43
455:16	117.44
455:17	117.45
455:26	117.46
455:36	117.47
455:40	117.48
455:50	117.49
455:70	117.50
455:75	117.51
455:78	117.52
456:05	117.26
456:10	117.27
456:15	117.28
456:20	117.29
456:25	117.30
468:00	119.01
468:05	119.02
468:10	119.03
468:15	119.04
468:20	119.05
468:25	119.06
468:30	119.07
468:35	119.08
468:40	119.09
468:45	119.10
468:50	119.11
468:55	119.12
468:60	119.13
468:65	119.14
468:70	119.15
468:75	119.16

468:80	119.17
468:85	119.18
468:90	119.19
468:95	119.20
468:100	119.21
470:00	99.60
470:05	99.61
470:10	99.62
470:15	99.63
470:20	99.64
470:25	99.65
470:30	99.66
475:00	121.01
475:05	121.02
475:10	121.03
475:15	121.04
475:20	121.05
475:25	121.06
475:30	121.07
475:35	121.08
475:40	121.09
475:45	121.10
475:50	121.11
475:55	121.12
475:60	121.13
475:65	121.14
475:70	121.15
475:75	121.16
475:80	121.17
475:85	121.18
485:00	120.02
485:00	120.01
485:05	120.03
485:10	120.04
485:15	120.05
485:20	120.06
485:25	120.07
491:00	113.60

491:05	113.61
491:10	113.62
491:15	113.63
491:20	113.64
500:00	110.35
500:05	110.36
500:10	110.37
500:15	110.38
500:20	110.39
505:00	103.02
505:10	103.02
506:00	93.30
506:01	93.31
506:05	93.32
506:10	93.33
506:15	93.34
506:20	93.35
506:25	93.36
506:30	93.37
506:35	93.38
506:40	93.39
506:45	93.40
506:50	93.41
507:00	93.50
507:01	93.51
507:05	93.52
507:10	93.53
507:15	93.54
507:20	93.55
507:25	93.56
507:30	93.57
507:35	93.58
507:40	93.59
507:45	93.60
507:50	93.61
507:55	93.62
507:60	93.63

507:65	93.64
510:00	99.75
510:05	99.76
510:10	99.77
510:11	99.78
510:15	99.79
510:16	99.80
510:20	99.81
510:25	99.82
510:30	99.83
515:00	100.55
515:04	100.56
515:05	100.57
515:10	100.58
515:12	100.59
515:15	100.60
515:20	100.61
515:25	100.62
515:30	100.63
515:35	100.64
520:00	151.014
600:00	99.01
600:05	99.02
600:10	99.03
600:15	99.04
600:25	99.05
605:20	99.06
610:00	99.15
610:15	99.16
610:30	99.17
615:00	99.30
615:33	99.31
615:36	99.32
615:42	99.33
615:44	99.34
615:46	99.35
615:48 - 615:54	99.36

615:57	99.37
615:60	99.38
615:63	99.39
615:66	99.40
615:77	99.41
615:80	99.42
615:85	99.43
615:90	99.44
615:95	99.45
616:00	99.46
616:05	99.47
616:10	99.48
620:01	101.01
620:06	101.02
620:11	101.03
620:16	101.04
620:21	101.05
650:00	96.40
650:02	96.41
650:04	96.42
650:08	96.43
650:10	96.44
650:12	96.45
650:14	96.01
650:17	96.02
650:18 - 650:24	96.03
650:26	96.04
650:28	96.05
650:30	96.06
650:32	96.07
650:34	96.08
650:36	96.09
650:38	96.10
650:40	96.11
650:42	96.12
650:48	96.13
650:52	96.14

650:54	96.15
650:56	96.16
650:58	96.17
650:60	96.18
650:62	96.19
650:64	96.20
650:66	96.21
650:68	96.22
650:70	96.23
650:72	96.24
650:74	96.25
650:76	96.26
650:78	96.27
655:00	96.28
675:00	100.01
675:02	100.02
675:03	100.03
675:04	100.04
675:07	100.05
675:09	100.06
677:05	100.15
678:00	100.16
678:15	100.17
678:20	100.18
682:00	100.30
682:05	100.31
682:10	100.32
682:15	100.33
682:20	100.34
682:25	100.35
682:30	100.36
682:35	100.37
682:40	100.38
682:45	100.39
682:50	100.40
682:55	100.41
682:60	100.42
700:00	71.01

705:00	71.15
705:05	71.16
710:00	73.50
710:05	73.51
715:00	73.01
715:05	73.02
715:10	73.03
720:00 - 720:05	71.02
725:00	72.01
725:03	72.02
725:15	72.03
725:18	72.04
725:21	72.05
725:24	72.06
725:27	72.07
725:30	72.08
725:31	72.09
725:32	72.10
725:33	72.11
725:36	72.12
725:39	72.13
725:42	72.14
725:45	72.15
725:48	72.16
725:50	72.17
725:51	72.18
725:54	72.19
725:57	72.20
725:60	72.21
730:00	73.30
730:05	73.31
730:10	73.32
730:40 - 730:65	73.38
730:70	73.39
730:75	73.40
735:00	71.40
735:05	71.41

735:10	71.42
735:15	71.43
735:20	71.44
735:25	71.45
735:30	71.46
735:35	71.47
735:40	71.48
735:45	71.49
735:50	71.50
740:00	71.25
740:05	71.26
740:10	71.27
740:15	71.28
740:20	71.29
740:25	71.30
805:00	112.030
805:05	112.031
805:10	112.032
805:20	112.033
805:25	112.034
805:30	112.035
805:40	112.036
805:45	112.037
805:50	112.038
805:55	112.039
805:60	112.040
805:65	112.041
805:70	112.042
805:75	112.043
805:80	112.044
805:85	112.045
805:90	112.046
805:95	112.047
810:00	112.055
810:05	112.056
810:10	112.057
810:15	112.058

810:20	112.059
810:25	112.060
810:30	112.061
810:35	112.062
810:40	112.063
810:45	112.064
810:50	112.002
810:55	112.065
810:60	112.066
810:65	112.067
810:70	112.068
810:75	112.069
820:00	112.095
820:05	112.096
820:10	112.097
820:15	112.098
820:20	112.099
820:25	112.100
825:00	112.001
903:10	37.01
903:20	37.02
903:40	37.03
903:50	37.04
903:60	37.05
903:70	37.06
903:80	37.07
903:90	37.08
903:100	37.09
903:110	37.10
910:00	134.30
910:05	134.31
910:10	134.32
910:20	134.33
910:20	134.34
910:25	134.35
912:00	133.01
912:05	133.02
912:10	133.03

912:15	133.04
912:20	133.05
914:00	130.01
920:00	134.15
920:05	134.16
920:10	134.17
920:15	134.18
920:20	134.19
922:00	134.02
935:00	133.15
935:05	133.16
935:10	133.17
940:00	131.01
940:05	131.02
940:10	131.03
940:11	131.04
940:15	131.05
950:00	136.01
950:05	136.02
950:10	136.03
950:15	136.04
950:20	136.05
950:25	136.06
950:30	136.07
950:35	136.08
950:45	136.09
950:50	136.10
950:55	136.11
961:00	135.01
961:05	135.02
961:10	135.03
961:15	135.04
961:20	135.05
961:25	135.06
961:30	135.07
961:35	135.08
965:00	134.03

980:00	130.02
985:00	130.03
1000:01	94.01
1000:06	94.02
1000:11	94.03
1000:16	94.04
1000:21	94.05
1000:26	94.06
1000:31	94.99
1000:60	94.07
1005:00	103.60
1005:10	103.61
1005:15	103.62
1020:00	97.01
1020:00	97.02
1020:00	97.20
1020:05	97.25
1025:00	91.01
1025:05	91.02
1025:10	91.03
1025:15	91.99
1105:00	70.02
1105:00	70.01
1110:00	70.03
1110:00	110.20
1200:00	10.05
1400:00	10.04

REFERENCES TO ORDINANCES

Ord. No.	*Date Passed*	*Code Section*
1971-31(A)	11-8-71	71.01
1972-106	5-8-72	105.01
1972-115	7-10-72	105.04
1972-117(A)	8-14-72	73.38

1972-120(A)	8-28-72	32.02
1972-121(A)	8-28-72	38.01
1972-122(A)	8-28-72	112.032, 112.036
1972-123(A)	8-28-72	151.101
1973-136	2-12-73	99.83
1973-138(A)	2-26-73	92.35
1973-142(A)	5-14-73	131.04
1973-147(A)	6-11-73	151.010
1973-154(A)	10-9-73	31.60
1973-156(A)	11-12-73	92.14
1973-159(A)	12-17-73	96.28
1974-161(A)	2-11-74	103.03
1974-169(A)	6-24-74	112.059
1974-170(A)	7-22-74	151.010
1974-176(A)	12-9-74	151.071
1975-181(A)	1-27-75	110.38
1975-210(A)	10-27-75	72.01, 72.18
1975-215(A)	12-8-75	151.005
1976-218(A)	2-9-76	93.07 - 93.09, 93.99
1976-225(A)	8-9-76	112.030, 112.055
1976-230(A)	- -	117.26 - 117.30
1977-233(A)	1-10-77	151.061, T.S.O. II
1977-237(A)	2-28-77	103.02
1977-238(A)	2-28-77	72.17
1977-240(A)	2-28-77	99.77, 100.58
1977-243(A)	4-11-77	151.071
1977-248(A)	8-22-77	151.006
1977-251(A)	10-11-77	92.01, 92.08, 92.09
1977-254(A)	12-12-77	151.102
1978-256(A)	1-9-78	130.03
1978-259(A)	3-17-78	10.99
1978-262(A)	4-24-78	99.15- 99.17
1978-265(A)	5-22-78	30.15
1978-266(A)	6-12-78	151.060
1978-274(A)	8-28-78	134.02
1979-283(A)	2-26-79	T.S.O. II
1979-285(A)	3-12-79	73.15 - 73.17

1979-295(A)	7-9-79	112.047
1979-296(A)	7-23-79	113.40 - 113.50
1979-301(A)	10-9-79	99.75
1979-303(A)	11-13-79	151.071
1980-316(A)	3-10-80	113.01 - 113.15
1980-317(A)	3-24-80	98.03 - 98.06
1980-320(A)	4-28-80	72.04
1980-330(A)	7-14-80	98.04
1980-334(A)	8-11-80	113.25 - 113.31
1980-337(A)	10-14-80	T.S.O. II
1980-342(A)	10-27-80	T.S.O. II
1980-346(A)	12-8-80	99.80 - 99.81, 103.02
1980-348(A)	12-15-80	T.S.O. II
1981-351(A)	1-26-81	103.02
1981-355(A)	3-23-81	118.09
1981-356(A)	3-23-81	98.01
1981-369(A)	11-9-81	T.S.O. II
1981-371(A)	12-14-81	112.032, 112.033, 112.039, 112.040
1981-372(A)	12-14-81	118.07, 118.09
1981-374(A)	12-14-81	151.014
1981-375(A)	12-14-81	99.75, 99.80
1982-377(A)	1-25-82	T.S.O. II
1982-378(A)	1-25-82	T.S.O. II
1982-383(A)	3-22-82	T.S.O. I
1982-384(A)	3-22-82	112.068
1982-385(A)	4-12-82	92.37 - 92.38
1982-386(A)	4-12-82	71.46 - 71.47
1982-390(A)	5-24-82	134.35
1982-395(A)	7-26-82	32.02, 32.05, 32.10, 32.13, 93.10, 93.11
1983-420(A)	5-9-83	112.001
1983-421(A)	5-9-83	117.41 - 117.51
1983-424(A)	5-23-83	72.08, 72.09
1983-439(A)	10-24-83	97.03, 97.05, 97.06
1983-440(A)	11-21-83	73.40
1983-442(A)	11-21-83	10.99
1984-444(A)	1-9-84	71.25 - 71.30
1984-445(A)	2-27-84	131.04

1984-447	4-9-84	Ch. 151
1984-449(A)	4-23-84	98.06
1984-452(A)	5-29-84	T.S.O. II
1984-454(A)	6-4-84	T.S.O. II
1984-455(A)	6-11-84	92.05
1984-457(A)	6-11-84	136.01
1984-458(A)	6-11-84	Ch. 135
1984-466(A)	9-24-84	112.065
1984-467(A)	10-8-84	72.04
1984-470(A)	11-13-84	98.07
1984-473(A)	12-17-84	101.01 - 101.05
1984-474(A)	12-17-84	99.60, 99.61, 99.63, 99.65
1985-477(A)	2-11-85	100.60 - 100.61
1985-480(A)	3-18-85	151.090
1985-482(A)	4-22-85	92.20
1985-487(A)	8-26-85	99.81, 99.82, 100.57, 100.58, 100.60
1985-493(A)	9-23-85	T.S.O. II
1985-496(A)	9-23-85	105.04
1985-501(R)	- -	151.086
1985-504(A)	12-2-85	36.01 - 36.06
1985-505(A)	12-2-85	32.03, 32.04, 32.08, 32.09, 32.10, 93.04
1986-511(A)	1-27-86	99.76
1986-517(A)	2-10-86	112.033
1986-528(A)	5-27-86	151.012
1986-531(A)	6-9-86	73.18
1986-535(A)	7-28-86	112.001
1986-536(A)	7-28-86	34.20 et seq.
1986-540(A)	8-18-86	99.66, 99.81, 99.82, 110.38, 151.014
1986-541(A)	8-18-86	71.49
1986-543(A)	9-22-86	T.S.O. II
1986-544(A)	9-22-86	112.030, 112.055, 112.064
1986-552(A)	12-8-86	136.10
1987-563(A)	6-8-87	112.030
1987-570(A)	8-24-87	33.03
1987-578(A)	10-12-87	136.09
1987-586(A)	12-21-87	93.12
1988-587(A)	1-25-88	99.06
1988-588(A)	1-25-88	30.15

1988-591(A)	2-22-88	71.43
1988-596(A)	7-11-88	151.043
1988-597(A)	7- -88	113.60 - 113.64
1988-602(A)	8-22-88	Ch. 150
1989-623(A)	3-6-89	110.39
1989-626(A)	6-26-89	92.01, 92.02, 92.04, 92.11, 92.13, 92.14, 92.18, 92.21, 92.24, 92.35, 92.37, 92.38
1989-627(A)	6-26-89	94.01 - 94.06
1989-628(A)	6-26-89	112.031, 112.042, 112.055, 112.056
1989-630(A)	8-28-89	103.02
1989-633(A)	9-25-89	98.01, 98.04, 98.06, 98.08, 98.09, 98.10
1989-634(A)	9-25-89	98.30 et seq., 98.99
1989-639(A)	11-20-89	112.033
1989-640(A)	12-18-89	94.06
1989-641(A)	12-18-89	112.042, 112.064, 112.066, 112.098
1990-644(A)	2-26-90	113.63
1990-645(A)	2-26-90	136.11
1990-654(A)	6-25-90	92.05
1990-655(A)	7-9-90	112.042
1990-657(A)	8-27-90	150.06
1990-660(A)	10-8-90	103.02, 151.014
1990-664(A)	11-26-90	112.032
1990-667(A)	12-17-90	117.40, 117.48
1990-668(A)	12-17-90	93.10, 93.12, 93.25
1991-671(A)	2-11-91	151.090
1991-677(A)	8-12-91	36.01 et seq.
1991-685(A)	11-25-91	34.01 et seq.
1991-686(A)	12-23-91	135.01, 135.02
1992-689	3-23-92	111.01 et seq.
1992-69	- -	150.26
1992-694	5-11-92	150.03 - 150.07
1992-696	5-11-92	110.13
1992-697	5-26-92	112.030
1992-700	8-24-92	112.041
1992-705	9-14-92	151.002, 151.006, 151.007, 151.056, 151.061, 151.086, 151.088
1992-710	10-12-92	104.18, 117.49

1993-713	1-11-93	92.07
1993-714	2-8-93	71.40, 71.50
1993-715	2-22-93	112.041
1993-720	5-24-93	72.02, 72.10
1993-726	7-12-93	31.75 et seq.
1993-727	7-12-93	133.01 - 133.05
1993-728	7-12-93	112.039
1993-733	9-27-93	130.01
1993-735	10-11-93	92.37
1993-738	11-8-93	92.36
1993-741	11-22-93	94.01, 94.03
1993-742	11-22-93	93.30 - 93.41
1993-743	11-22-93	93.50 - 93.64
1993-744	11-22-93	99.76, 99.77, 99.80, 99.82, 103.01, 103.02
1993-746	12-13-93	151.007
1993-748	12-20-93	100.55 et seq.
1994-699	- -	113.63
1994-752	1-10-94	91.01 - 91.03, 91.99
1994-755	4-11-94	100.57
1994-756	5-9-94	151.005, 151.089, 151.090
1994-762	5-23-94	134.19
1994-763	6-13-94	30.01
1994-765	7-25-94	113.63
1994-766	9-12-94	150.05, 150.29
1995-774	2-13-95	99.36, 99.75, 99.78
1995-779	4-24-95	Ch. 96, Ch. 98, 99.01 - 99.48, 100.01 - 100.56, Ch. 101, 103.01, 103.03 - 103.05, 103.75 et seq., 105.01 - 105.03
1995-784	7-10-95	32.01 et seq., 93.01, 93.04, 93.12, 98.16, 93.25, 93.26
1996-795	1-22-96	117.41 et seq.
1996-800	3-25-96	100.63, 100.64
1996-801	3-25-96	151.060, 151.061
1996-818	5-28-96	100.55
1996-830	12-16-96	103.01, 105.04
1997-841	3-24-97	112.001, 112.039, 112.041, 112.047, 112.055 - 112.059, 112.061, 112.064,

		112.065, 112.069
1997-843	3-24-97	110.37, Ch. 119
1997-845	4-28-97	110.37
1997-846	5-12-97	36.01 et seq.
1997-848	6-9-97	150.06, 150.13, 150.14
1997-861	10-27-97	92.01, 92.02, 92.06 - 92.08, 92.12, 92.14, 92.16 - 92.23, 92.35, 92.36, 92.38, 94.04
1997-863	11-24-97	31.01, 31.02
1998-870	3-23-98	31.76
1998-871	4-13-98	Ch. 97
1998-873	4-13-98	110.37, Ch. 122
1998-878	4-13-98	30.15, 30.18
1998-880	5-11-98	30.01
1998-881	5-26-98	Ch. 37
1998-887	8-10-98	151.061
1998-889	10-12-98	93.04, 93.25, 93.26
1998-890	12-14-98	99.04, 99.06, 99.07, 99.30, 99.34 - 99.36, 99.40 - 99.42, 99.46, 99.47, 99.75 - 99.80, 99.82, 99.83, 100.04, 100.06, 100.30 - 100.32, 100.34 - 100.36, 100.40, 100.41, 100.55, 100.57 - 100.63, 101.03 - 101.05
1998-891	12-14-98	103.01
1999-894	2-22-99	32.02
1999-895	3-22-99	113.63
1999-900	5-24-99	150.05
1999-901	6-28-99	34.01 et seq.
1999-905	10-11-99	151.061
1999-912	10-25-99	73.32.73.38 - 73.40
1999-914	11-08-99	150.03, 150.29, 150.32
2000-923	4-10-00	30.01
2000-927	6-26-00	113.63
2000-930B	8-28-00	Adopting Ordinance
2000-931	9-5-00	71.03
2000-932	9-11-00	30.39
2000-933	10-9-00	150.06
2000-934	11-13-00	119.40 - 119.52

2000-935	11-13-00	150.03, 150.06, 150.25 - 150.31
2000-936	11-13-00	Ch. 152
2000-937	11-13-00	Appendix
2000-939	11-13-00	150.03, 150.04
2001-944	1-8-01	92.01, 92.03
2001-945	1-8-01	39.01, 39.02
2001-946	1-8-01	40.01, 40.02
2001-947	1-22-01	152.480 - 152.486
2001-948	2-12-01	90.01, 90.15 - 90.18
2001-949	2-26-01	152.460 - 152.467
2001-951	3-26-01	152.530
2001-952	5-14-01	152.008, 152.031, 152.142, 152.181, 152.182, 152.243, 152.262, 152.342, 152.344, 152.361, 152.374, 152.435, 152.547, 152.562, 152.563, 152.570
2001-954	7-9-01	92.40
2001-955	8-13-01	106.01, 106.02
2001-956	8-13-01	117.42 - 117.44, 117.46, 117.52, 117.53
2001-958	10-22-01	114.01 - 114.10
2001-959	11-13-01	73.32, 73.38
2001-960	11-26-01	112.039
2001-961	11-26-01	151.026, 151.055, 151.056, 151.061, 151.086, 151.088, 151.090, 152.111, 152.221, 152.222, 152.275, 152.291
2002-963	2-11-02	113.62
2002-964	2-25-02	39.01, 39.02
2002-969	5-13-02	95.01 - 95.08
2002-971	5-13-02	112.036, 112.062, 112.097
2002-972	5-13-02	107.01 - 107.06, 107.99
2002-973	5-28-02	97.01 - 97.55
2002-975	6-10-02	117.40, 117.42 - 117.44, 117.46, 117.48 - 117.52
2002-976	6-10-02	30.01
2002-977	6-24-02	152.344, 152.361, 152.417
2002-978	8-12-02	152.182, 152.342
2002-981	11-25-02	108.01 - 108.05
2002-983	11-25-02	109.01 - 109.03
2002-985	11-25-02	151.026

2002-987	12-16-02	117.42, 117.44
2003-988	2-3-03	30.15
2003-989	2-10-03	152.008, 152.222, 152.241, 152.243, 152.261 - 152.263, 152.271, 152.272, 152.275, 152.342, 152.361, 152.374, 152.375
2003-990	2-18-03	Established moratorium extension that with the adoption of Ord. 2003-991, the temporary moratorium imposed by Ord. 2002-986 and the extension imposed by Ord. 2003-990 is terminated.
2003-991	3-17-03	152.480 - 152.482
2003-992	3-17-03	31.90 - 31.93
2003-994	3-24-03	10.20
2003-996	4-14-03	91.02
2003-997	5-12-03	152.033, 152.142, 152.150, 152.243, 152.263, 152.275, 152.292, 152.361, 152.363, 152.374, 152.392, 152.415, 152.417, 152.545
2003-999	6-2-03	103.01, 103.02, 103.75, 103.77
2003-1000	6-16-03	152.342
2003-1002	8-25-03	150.03, 150.25 - 150.28, 150.30
2003-1003	9-22-03	T.S.O. II
2003-1004	10-6-03	152.361
2003-1005	10-20-03	102.20 - 102.50
2003-1006	10-27-03	T.S.O. I
2003-1007	10-27-03	117.481, 117.485, 117.52
2003-1008	11-3-03	72.10, 152.008, 152.145, 152.242, 152.261, 152.262, 152.273, 152.342, 152.361
2003-1009	11-17-03	T.S.O. II
2003-1010	12-1-03	93.01, 93.04, 93.09, 93.13, 93.25 - 93.28, 93.30 - 93.41, 93.50 - 93.64
2004-1011	1-5-04	152.222
2004-1012	5-3-04	152.008, 152.144, 152.145, 152.242
2004-1013	5-10-04	110.13, 111.02, 111.08, 112.033, 112.035, 112.041, 113.44, 119.07, 119.18, Repealed 110.19
2004-1014	5-10-04	110.05
2004-1018	8-23-04	152.342

2004-1021	11-15-04	117.42, 117.43, 117.44, 117.46, 117.485, Repealed 117.462 and 117.463, 117.481, 117.52
2004-1023	12-6-04	112.101
2004-1024	12-13-04	152.342
2004-1026	12-13-04	150.03, 150.06
2004-1028	12-13-04	152.008, 152.142, 152.212, 152.221, 152.222, 152.243
2004-1029	12-13-04	152.008, 152.090 - 152.096
2005-1030	1-10-05	94.01, 94.08 - 94.15, 94.99
2005-1031	1-18-05	30.15
2005-1032	2-7-05	152.008, 152.146, 152.148, 152.342, 152.361, 152.362
2005-1033	2-7-05	152.008, 152.263, 152.491, 152.510, 152.512, 152.513, 152.514, 152.516, 152.517, 152.518, 152.520, 152.522
2005-1036	5-23-05	117.42, 117.44, 117.52, Repealed 117.461
2005-1040	6-6-05	151.061
2005-1045	7-18-05	112.041
2005-1046	8-1-05	152.008, 152.263
2005-1047	8-22-05	90.01
2005-1049	9-26-05	152.008, 152.193 - 152.196
2005-1051	11-7-05	152.008, 152.415
2005-1052	11-28-05	112.001
2006-1054	1-23-06	30.01
2006-1055	2-6-06	152.221
2006-1058	6-5-06	152.008, 152.342, 152.344
2006-1059	6-5-06	152.145, 152.146, 152.147, 152.373, 152.374, Repealed 152.276, 152.376
2006-1061	7-24-06	151.061
2006-1062	8-7-06	T.S.O. II
2006-1063	9-5-06	152.222
2006-1064	10-2-06	93.26
2006-1067	11-27-06	92.01, 92.12, 92.14, 92.15, 92.18, 92.25, 92.26
2007-1068	2-20-07	117.42 - 117.45
2007-1070	3-26-07	152.033, 152.181, 152.182, 152.261, 152.342, 152.434 - 152.436

2007-1075	8-20-07	103.01
2007-1076	8-20-07	99.46, 99.78, 100.35, 100.40, 100.41, 100.55, 100.63, 100.65
2007-1077	8-20-07	93.25 - 93.28
2007-1078	10-15-07	31.75, 31.79
2007-1081	11-26-07	152.361, 152.362
2007-1082	12-3-07	T.S.O. I
2008-1084	2-4-08	136.01 - 136.06, 136.10, 136.11
2008-1085	3-24-08	152.008, 152.276, 152.370 - 152.376, Repealed 152.377, 152.378, 152.379
2008-1086	4-7-08	31.45, 31.60, 31.76, 31.92
2008-1087	5-27-08	117.485
2008-1089	6-23-08	98.04, 98.14
2008-1090	7-7-08	117.40, 117.41, 117.43, 117.46, 117.48, 117.483, 117.49, 117.491, 117.52
2008-1092	8-25-08	151.089, 151.090, 152.023
2008-1093	8-25-08	117.485
2009-1096	2-23-09	92.01, 92.02, 92.04, 92.12, 92.14, 92.16, 92.17, 92.20, 92.25 - 92.31
2009-1097	4-6-09	112.003, 112.044
2009-1099	5-4-09	93.25, 93.26
2009-1100	5-26-09	72.10
2009-1103	9-8-09	37.08, 117.521
2009-1104	9-8-09	106.01, 106.02
2009-1105	9-8-09	T.S.O. II
2009-1106	10-5-09	39.02, 40.01, 40.02
2009-1107	10-19-09	152.433
2010-1110	1-4-10	98.14
2010-1112	4-5-10	97.20
2010-1113	4-5-10	152.008, 152.140 - 152.145
2010-1114	4-26-10	92.01, 92.03, 92.32, 95.01, 95.02, 95.04
2010-1115	6-7-10	41.01 - 41.04
2010-1116	7-6-10	72.10
2010-1117	9-7-10	150.29
2010-1118	10-4-10	152.361, 152.362
2010-1120	11-22-10	152.146
2010-1121	12-6-10	150.05
2010-1122	12-20-10	152.008, 152.342.01, 152.344

2010-1123	1-3-11	123.01 - 123.13, 123.99
2011-1125	4-4-11	134.04
2011-1127	7-25-11	152.263, 152.292
2011-1131	10-24-11	152.034
2012-1133	3-5-12	152.008, 152.055, 152.142, 152.145, 152.146, 152.184 - 152.188, 152.261, 152.262, 152.321, 152.325, 152.342, 152.344, 152.361, 152.362, 152.373, 152.374, 152.378 Repealed 152.326
2012-1135	3-26-12	105.02, 105.05, 105.06, 114.02, Repealed 117.01 - 117.16, 117.25, 117.26, 117.28
2012-1136	3-26-12	37.04, 37.05
2012-1137	4-2-12	10.20
2012-1138	4-16-12	152.182, 152.342
2012-1139	4-16-12	152.008, 152.142, 152.342, 152.344, 152.361
2012-1140	4-16-12	112.030, 112.032, 112.045, 112.048, 112.049, 112.200 - 112.202, 112.210, 112.211, 112.300, 112.998, 112.999, Repealed 112.015 - 112.018 and 112.080 - 112.084
2012-1143	5-21-12	152.008, 152.361, 152.362
2012-1147	8-20-12	150.06
2012-1148	9-4-12	98.01, 98.02, 98.07
2012-1149	9-4-12	92.01, 92.04, 92.15, 94.04, 152.342, 152.361
2012-1150	10-15-12	152.181, 152.182
2012-1152	10-22-12	150.03, 150.06
2013-1153	1-28-13	152.361
2013-1154	3-4-13	124.01 - 124.14
2013-1155	3-25-13	152.181
2013-1157	6-10-13	Repealed 106.03
2013-1158	7-15-13	152.291, 152.292, 152.294
2013-1160	8-19-13	112.033
2013-1163	10-21-13	152.262
2014-1165	2-3-14	150.03, 150.04, 150.06
2014-1166	2-3-14	Repealed 113.01 - 113.31, 115.01 - 115.05, 116.01 - 116.07, 116.20 -

		116.28
2014-1169	5-5-14	152.342
2014-1170	5-27-14	97.01 - 97.03, 97.20, 97.25, 97.30, 97.35, 97.40, 97.45, 97.50, 97.55
2014-1171	6-16-14	Appendix Fee Schedule
2014-1177	7-7-14	114.03, 119.30, 152.008, 152.361, 152.362
2014-1180	9-2-14	152.305, 152.342, 152.460, 152.462
2014-1182	10-6-14	152.008, 152.342, 152.361
2014-1183	10-6-14	112.400 - 112.403
2014-1184	10-20-14	152.262
2014-1186	12-15-14	150.03, 150.27 - 150.31
2015-1187	2-17-15	30.15
2015-1189	3-23-15	152.262
2015-1190	4-28-15	152.262
2015-1191	5-18-15	92.50 - 92.58, 152.008, 152.243, 152.361
2015-1192	5-26-15	122.01 - 122.03, 122.05 - 122.09, 122.11, 122.99
2015-1196	9-14-15	112.041, 112.300, 112.400 - 112.403
2015-1197	9-28-15	99.76, 100.63
2015-1198	10-12-15	152.142, 152.342, 152.344
2015-1200	11-23-15	T.S.O. I
2015-1201	11-23-15	T.S.O. I
2016-1203	3-14-16	112.202, 112.403
2016-1206	8-22-16	152.264
2016-1207	9-12-16	106.01, 106.02
2016-1208	9-29-16	117.49, 117.491, 117.52
2016-1209	10-10-16	152.008, 152.491, 152.510 - 152.514, 152.517 - 152.520
2016-2011	11-14-16	152.008, 152.342.01, 152.343, 152.344
2016-1212	11-14-16	152.375, 152.391, 152.392
2017-1217	7-10-17	104.01 - 104.19, 153.01 - 153.08, 153.99

PARALLEL REFERENCES