

**WEST ST. PAUL, MINNESOTA
CODE OF ORDINANCES**

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TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL CODE CONSTRUCTION; GENERAL PENALTY

CHAPTER 10: GENERAL CODE CONSTRUCTION; GENERAL PENALTY

Section

- 10.01 Title of code
- 10.02 Rules of interpretation
- 10.03 Captions
- 10.04 Definitions
- 10.05 Severability
- 10.06 Reference to other sections
- 10.07 Reference to offices
- 10.08 Errors and omissions
- 10.09 Reasonable time
- 10.10 Application to future ordinances
- 10.11 Ordinances unaffected
- 10.12 Effective date of ordinances
- 10.13 Repeal or modification of ordinance
- 10.14 Preservation of penalties, offenses, rights and liabilities
- 10.15 Copies of code
- 10.16 Adoption of statutes and rules by reference
- 10.17 Enforcement

10.98 Administrative citations

10.99 General penalty

§ 10.01 TITLE OF CODE.

(A) All ordinances of a permanent and general nature of the city, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the "West St. Paul City Code," for which designation "code of ordinances," "codified ordinances" or "code" may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

(B) All references to codes, titles, chapters and sections are to the components of the code, unless otherwise specified. Sections may be referred to and cited by the designation "§" followed by the number, such as "§ 10.01." 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.

§ 10.02 RULES OF INTERPRETATION.

(A) *Generally.* Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall 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 city shall be by the following rules, unless that construction is plainly contrary to the intent of the legislative body or of the context of the same ordinance.

(1) *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, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(2) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include all 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.

(3) *Officer.* Any reference to a city officer includes the officer's authorized representatives.

§ 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 shall be taken in their plain, or ordinary and usual sense; however, technical words and phrases having a particular and appropriate meaning in law shall be understood according to their technical import.

(B) *Statutory definitions.* For the purposes of this code, the terms defined in Minn. Stat. §§ 645.44 and 645.45, as they may be amended from time to time, have the meanings given them by those sections. Terms defined by statutes, rules or regulations, and ordinances adopted by reference, have the meanings given them.

(2001 Code, § 105.03)

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

ADOPTED BY REFERENCE. The stated statutory or regulatory sections are part of this code as if fully set forth within the code. A violation of the statutes or rules adopted by reference is a violation of the code.

CHARTER. The Charter of the City of West St. Paul, Minnesota.

CITY. The area within the corporate boundaries of the City of West St. Paul, as presently established, or as amended by ordinance, annexation or other legal actions at a future time.

CLERK. The West St. Paul City Clerk.

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

COUNCIL. The West St. Paul City Council.

COUNTY. Dakota County.

MANAGER. The West St. Paul City Manager.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those 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.

PERSON. Extends to and includes an individual, person, association, firm, corporation, bodies corporate and politic, partnership, 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.

SHALL. The act referred to is mandatory.

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**.

YEAR. A calendar year, unless otherwise expressed.

(2001 Code, § 105.01)

§ 10.05 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.06 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section, that 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.

§ 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 city exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the office.

§ 10.08 ERRORS AND OMISSIONS.

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

§ 10.09 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** shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

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

§ 10.10 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

§ 10.11 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.

§ 10.12 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after its publication, unless otherwise expressly provided in the ordinance, or state law.

§ 10.13 REPEAL OR MODIFICATION OF ORDINANCE.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the effective date of the new ordinance.

(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.

§ 10.14 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued; punishments, penalties or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

§ 10.15 COPIES OF CODE.

The official copy of this code shall be kept in the office of the City Clerk for public inspection. The Clerk shall provide a copy for sale pursuant to the fee schedule.

§ 10.16 ADOPTION OF STATUTES AND RULES BY REFERENCE.

It is the intention of the City Council that, when adopting this code, all future amendments to any state or federal rules and statutes adopted by reference are hereby adopted as if they had been in existence at the time this code was adopted, unless there is clear intention expressed in the code to the contrary.

§ 10.17 ENFORCEMENT.

(A) Any licensed peace officer of the city's Police Department, or the County Sheriff, or any Deputy Sheriff, shall have the authority to enforce any provision of this code.

(B) The following individuals designated in this section or by the City Council shall have the authority to administer and enforce the provisions specified:

- (1) Building Official;
- (2) City Clerk;
- (3) City Engineer;
- (4) City Manager;
- (5) City Planner;
- (6) Code Enforcement Officer;
- (7) Community Development Director;
- (8) Community Development Specialist;
- (9) Community Service Officer;
- (10) Crime Prevention Specialist;
- (11) Electrical Inspector;
- (12) Fire Chief;
- (13) Fire Inspector;
- (14) Fire Marshal;
- (15) Licensing Clerk;
- (16) Police Reserve;
- (17) Weed Inspector; and
- (18) Zoning Administrator.

(C) The City Clerk and any city official or employee designated by this code who has the responsibility to perform a duty under this code may, with the permission of a licensee of a business or owner of any property or resident of a dwelling, or other person in control of any premises, inspect or otherwise enter any property to enforce compliance with this code.

(D) *Inspection of buildings and premises.*

(1) *General rule.* For the purpose of safeguarding the health and safety of the general public and of the occupants of all buildings or to determine compliance with the code, an order or a permit or license, it is the duty of any authorized officer to conduct

inspections to determine the condition of the buildings and premises located within the city. For the purpose of making the inspection, the authorized officer is authorized to enter, examine and survey the building or premises at all reasonable times.

(a) *Notice.* Prior to making the inspection, the authorized officer will inform the occupants of the building or premises to be inspected of the date and time of the inspection by personal service or regular mail postmarked not less than 72 hours prior to the time the inspection is made.

(b) *Access.* After the written notice has been given, the owner, occupant or operator of the building must give the authorized officer free access to the building and its premises, for the purpose of the inspection, examination or survey, provided that the inspection, examination or survey must not have for its purpose the harassment of the owner or occupant and the inspection, examination or survey is made so as to cause the least amount of inconvenience to the owner or occupant.

(c) *Emergency access.* The authorized officer must be allowed immediate entry:

1. At any time when in the opinion of the authorized officer an actual emergency tending to create an immediate danger to public health and safety exists; or

2. At any time when the inspection, examination or survey may be requested by the owner or occupant.

(E) *Application for search warrant.* Upon a refusal of any owner or occupant to permit the authorized officer access to a dwelling, dwelling unit or premises to make an inspection, and upon a belief of probable cause that the dwelling, dwelling unit or premises does not conform to the requirements of this code, the authorized officer may make application to the appropriate court for an order or warrant directing the inspection and search of the dwelling, dwelling unit or premises for its conformity to the requirements of this code, and any evidence or information from the inspection or search may be used in any court proceedings.

(F) *Interference with official duties.* It is unlawful for any person to prevent, delay or interfere with representatives of the city while they are engaged in the performance of his or her duties.

§ 10.98 ADMINISTRATIVE CITATIONS.

(A) *Purpose.*

(1) The City Council seeks to offer an alternative method of enforcement for city code violations rather than relying on the criminal court system. The formal criminal prosecution process does not provide an environment to adequately address the unique and sensitive issues that are involved in city code violations, including, but not limited to, neighborhood concerns, livability issues, economic impact, physical limitations of the offenders and the stigma and unintended consequences of being charged with or convicted of a misdemeanor offense. In addition, the court system is a slow, overburdened and methodical process that is not conducive to dealing with the violations in a prompt and timely manner. Finally, the penalties afforded the criminal court system are restricted to fines or physical confinement, which are not always effective solutions to address city code violations.

(2) In order to provide more flexibility in addressing city code violations on an individualized basis that will be more efficient and effective, the City Council finds that an alternative enforcement process is necessary. Therefore, to protect the health, safety and welfare of the citizens of the city, it is the City Council's intent to create a process for the use and imposition of administrative civil penalties that will provide the public and the city with a more effective alternative method for addressing city code violations.

(2001 Code, § 120.01)

(B) *Alternative methods of enforcement.* A violation of the city code is a misdemeanor pursuant to § 10.99; however, this section seeks to gain compliance with the city code as an alternative to the commencement of any formal civil or criminal court action. The administrative civil penalties proceedings are in addition to any other legal or equitable remedy available to the city for city code violations. The city may, in its discretion, choose not to issue an administrative citation and may initiate criminal charges instead.

(2001 Code, § 120.03)

(C) *Authority to issue compliance letters and administrative citations.* The city employees and agents identified in § 10.17(B) are authorized to issue compliance letters and administrative citations for violations of the city code.

(D) *Compliance letter.*

(1) *Contents of compliance letter.* If a city employee or agent determines that a city code violation has occurred, when appropriate, a compliance letter shall be issued. The compliance letter shall contain the following information:

(a) A description or address of the property on which the city code violation has occurred;

(b) The nature of the violation, including a reference to the appropriate city code section;

(c) A compliance deadline, providing a reasonable time for compliance based on the nature of the violation; and

(d) A statement that failure to correct the violation may result in the imposition of an administrative citation, including a civil penalty and stating the amount of the penalty as provided in the fee schedule.

(2) *Service of compliance letter.* The compliance letter may be served on the offender by certified mail, regular mail sent to the last known legal address, by personal service or by posting a copy in a conspicuous place in or about the building or property affected by the letter.

(3) *Reasonable extensions.* Following service of the compliance letter, the city shall attempt to work to resolve the violation, including, but not limited to, offering reasonable extensions for compliance.

(4) *Exceptions to issuance of a compliance letter.* For violations of any of the following sections, the city shall not be required to issue a compliance letter and may proceed directly to issuance of an administrative citation as provided in division (E) below.

(a) *Repeat offender.* If the same offender commits a subsequent violation within 12 months after a compliance letter has been issued for a same or similar offense.

(b) *License violations.* For any license violations, including, but not limited to, not having a license.

(c) *Traffic or parking violations.* For traffic or parking violations issued under Title VII.

(d) *Animal violations.* For any violation of § 90.02 (running at large) or § 90.05 (dangerous dogs).

(e) *Noise violations.* For any violation of § 133.01 (unnecessary noise).

(f) *Fire prevention violations.* For violations of Chapter 91, Fire Prevention Code.

(g) *Emergency situations.* When a condition exists that requires immediate action to protect the public health, safety and welfare.

(h) Disorderly conduct or other similar behavior that tends to disrupt, injure or annoy a reasonable person for which a compliance letter would be moot, as the conduct or behavior has terminated.

(E) *Administrative citation.*

(1) *Generally.*

(a) Upon the failure to correct the violation specified in the compliance letter within the time frame established in the compliance letter or any extension thereof granted by the city, or for any offense for which a compliance letter is not required, an administrative citation may be issued.

(b) The administrative citation shall be served by certified mail, regular mail or by personal service and shall contain the following information:

1. A description or address of the property on which the city code violation has occurred;

2. Reference to the city code that is alleged to be violated;

3. The amount of the administrative civil penalty for the specific city code violation, which shall be due and payable to the city within 30 days of the date the citation is mailed or personally served;

4. A statement that the violation must be corrected or a subsequent administrative or a criminal citation may be issued;

5. A statement that the city code violation and the amount of the administrative civil penalty may be contested to be heard before an independent hearing officer by notifying the City Clerk in writing within ten days after the citation was mailed or personally served; and

6. A statement that failure to pay the administrative civil penalty may result in it being assessed against the property as provided in Minn. Stat. Chapter 429, as it may be amended from time to time.

(2) *Payment of penalty and correction of violation.* If the offender pays the administrative civil penalty and corrects the city

code violation, no further action will be taken for that same violation.

(3) *Payment of penalty without correction of violation.* If the offender pays the administrative civil penalty but fails to correct the city code violation, the city may issue a subsequent administrative citation, initiate criminal proceedings or initiate any other proceedings or remedies available in order to enforce correction of the city code violation.

(4) *No payment of penalty and no correction of violation.* If the offender fails to pay the administrative civil penalty and fails to correct the city code violation, the city may do any of the following, or any combination thereof:

(a) Assess the administrative civil penalty against the property pursuant to Minn. Stat. Chapter 429, as it may be amended from time to time;

(b) Issue a subsequent administrative citation, thereby commencing a new administrative penalties process;

(c) Initiate criminal proceedings; and/or

(d) Initiate other enforcement action authorized by law.

(2001 Code, § 120.09)

(5) Failure to pay an administrative citation for which the costs cannot be assessed shall be a misdemeanor.

(F) *Contesting the administrative citation.*

(1) An offender receiving an administrative citation may contest the alleged city code violation and the amount of the administrative civil penalty.

(2) In order to contest any part of the administrative citation, the offender must notify the City Clerk in writing within ten calendar days after the citation is mailed or personally served, stating that the offender contests the alleged violation, the amount of the penalty or both and pay a \$200 non-refundable filing fee.

(2001 Code, § 120.11)

(G) *Administrative citation hearing.*

(1) *Scheduling the hearing.* After receipt of the written notice to contest the citation as provided in division (F) above, the City Clerk shall schedule a hearing before an independent hearing officer, which will be held within 60 days, unless otherwise agreed to in writing by the parties. The City Clerk shall notify the owner of the date, time and location of the hearing.

(2) *Independent hearing officer.* An independent hearing officer, who may be from the office of administrative law judges, shall preside over the administrative citation hearing.

(3) *Conduct of the administrative citation hearing.*

(a) At the hearing, both parties may be represented by counsel, shall have the opportunity to present testimony, shall be able to call and question witnesses and introduce any exhibits; however, strict rules of evidence shall not apply.

(b) The hearing officer shall receive and give weight to the evidence, including hearsay evidence.

(c) The hearing shall be recorded and a full record of the proceedings shall be maintained by the city according to its data retention schedule.

(4) *Authority of hearing officer.* The independent hearing officer has the authority to do any of the following, or a combination thereof:

(a) Make a finding that a violation has occurred;

(b) Reduce, stay or waive a scheduled administrative civil penalty either unconditionally or upon compliance with reasonable conditions;

(c) Require compliance with the city code within a specified time frame; and/or

(d) Make a finding that no violation has occurred and dismiss the administrative citation.

(5) *Decision and order.*

(a) The hearing officer may announce a decision at the conclusion of the hearing or may take the matter under advisement.

(b) The hearing officer shall issue a decision in the form of an order and shall serve a written copy of the order upon the parties no later than ten days after the hearing.

(c) Any administrative civil penalty that the independent hearing officer imposes must be paid to the city within the time frame established in the order. If no date is specified, it must be paid within 30 days of the hearing officer's order.

(d) If the administrative civil penalty is not paid, the city may assess the civil penalty against the owner's property pursuant to Minn. Stat. Chapter 429, as it may be amended from time to time.

(e) If the hearing officer determines that no violation occurred, then the city may not proceed with criminal prosecution for the same act or conduct.

(6) *Finding of violation.* If the violation is upheld, then the offender must pay for the cost of the hearing, not to exceed \$1,000, toward the cost of the hearing.

(7) *Failure to appear.* Failure to appear at the hearing shall result in a default judgment against the party who fails to appear. If the offender fails to appear, the administrative citation shall be sustained and the fee for the cost of the hearing shall be imposed. If the city fails to appear, the administrative citation shall be dismissed and the filing fee shall be refunded.

(2001 Code, § 120.13)

(H) *Appeal.* The hearing officer's decision is final and may only be appealed to the Minnesota Court of Appeals.

(2001 Code, § 120.15)

(I) *Schedule of administrative civil penalties.*

(1) The city shall adopt a fee schedule of administrative civil penalties for city code violations by resolution.

(2) The maximum amount of an administrative civil penalty may not exceed twice the maximum fine authorized by state law for misdemeanor offenses or the maximum fine authorized by state law for an administrative process.

(2001 Code, § 120.17)

§ 10.99 GENERAL PENALTY.

(A) Any person 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 that is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall include a sentence of a fine or jail or both, up to the maximum authorized by law.

(B) *Exceptions.* Where a provision of this code or a statute, rule, or regulation adopted by reference in this code sets a lesser penalty such as an administrative citation or a petty misdemeanor, or a different period constituting a violation than set pursuant to City Code § 10.99, that code or statutory or regulatory provision prevails.

(C) Pursuant to Minn. Stat. § 631.48, as it may be amended from time to time, 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.

(E) In addition to any penalties provided for in this section or in § 10.98, if any person, firm or corporation fails to comply with any provision of this code, the Council or any city official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.

TITLE III: ADMINISTRATION

30. GENERAL PROVISIONS

31. CITY ORGANIZATIONS

32. PERMIT PROCEDURES

33. POLICIES AND PROCEDURES

34. FEES, FUNDS AND FINANCE

CHAPTER 30: GENERAL PROVISIONS

Section

30.01

Emergency management

30.02

Administrative Code

30.03

Municipal election

30.04

Salaries

30.05

Background investigations

Cross-reference:

Permit procedures, see Chapter 32

Policies and procedures, see Chapter 33

§ 30.01 EMERGENCY MANAGEMENT.

(A) The city has created the Office of Emergency Management, and appointed a Director of the Office of Emergency Management.

(B) As a result, the Emergency Management Act, Minn. Stat. Chapter 12, as it may be amended from time to time, as it relates to cities, is adopted by reference.

(2001 Code, § 900.01)

§ 30.02 ADMINISTRATIVE CODE.

(A) *Administrative Code.* This is the West St. Paul Administrative Code, established for the purpose of dividing the administrative services of the city into departments and divisions and defining their responsibilities.

(B) *Departmental organization.* The departments and divisions in the city administration lead by the department heads are as follows:

<i>Department</i>	<i>Head</i>
Executive	City Manager
City Clerk Department	City Clerk/Assistant City Manager
Finance Department	City Treasurer/Finance Director

Legal Department	City Attorney
Police Department	Police Chief
Investigative Division	
Uniform Division	
Emergency Preparedness Division	
Communications Division	
Records/Clerical Division	
Fire Department	Fire Chief
Fire Prevention Division	
Parks and Recreation Department	Parks and Recreation Director
Public Works Department	Public Works Director/City Engineer
Engineering Division	
Maintenance Division	
Utilities Division	
Community/Economic Development Department	Community/Economic Development Director

(1) *Executive Department.* The Executive Department is responsible for the administration of all city functions through the various department heads, within guidelines established by the City Council and Charter.

(2) *City Clerk Department.* The City Clerk Department is responsible for the maintenance of public records, licenses and elections, as well as assisting the Executive Department in the administration of all city functions.

(3) *Finance Department.* The Finance Department is responsible for the administration of the financial affairs of the city. Duties of the Finance Department include, but are not limited to receipt, custody and disbursement of all city monies, assistance in the preparation and administration of budgets and financial plans, management of city debt and preparation of internal and external financial reports.

(4) *Legal Department.* The Legal Department is responsible for providing legal services to the city, including representation involving civil litigation and prosecution of petty misdemeanors, misdemeanors and gross misdemeanors. The Legal Department also acts in an advisory capacity to the City Council, appointed committees and staff.

(5) *Police Department.*

(a) The Police Department is responsible for maintaining law and order, preventing crime, protecting lives and property and enforcing laws and ordinances.

(b) The divisions within the Police Department are as follows:

- Investigative Division, which is responsible for advanced investigation of criminal offenses and referred juvenile offenses.
- Uniform Division, which is responsible for the enforcement of traffic laws, city ordinances, criminal investigations and accident investigations.
- Emergency Preparedness Division, which is responsible for preparing, implanting and maintaining an emergency preparedness plan and an emergency warning system.
- Communications Division, which is responsible for receiving and maintaining proper records of all calls, dispatching the

appropriate department and equipment and entering records into the Department's database.

5. Records/Clerical Division, which is responsible for the maintenance and dissemination of all records kept by the Department and providing clerical support.

(6) *Fire Department.*

(a) The Fire Department is responsible for the protection of life and property against fire and other emergencies, which include, but is not limited to, fire services, emergency medical services, hazardous materials operational level response, and confined space operational level response rescues.

(b) Within the Fire Department there is the Fire Prevention Division, which is responsible for the prevention of fires and removal of fire hazards through enforcing the Fire Prevention Code, promoting education on fire safety and conducting fire inspections.

(7) *Parks and Recreation Department.* The Parks and Recreation Department is responsible for park maintenance and development, recreation programming and facilities, and the preservation of natural resources and urban forestry.

(8) *Public Works Department.*

(a) The Public Works Department is responsible for the planning, design, maintenance and construction of streets and alleys, sanitary and storm sewers, water distribution systems and other public facilities construction work in the city.

(b) The divisions within the Public Works Department are as follows:

1. Engineering Division, which is responsible for the design and construction of all streets, alleys, sidewalks, sanitary and storm sewers and lift stations.

2. Maintenance Division, which is responsible for the maintenance, cleaning and plowing of all improved streets and alleys and the maintenance and cleaning of all city owned storm sewers.

3. Utilities Division, which is responsible for the maintenance of all sanitary sewer and water facilities owned and operated by the city.

(9) *Community/Economic Development Department.* The Community/Economic Development Department is responsible for overseeing planning, zoning, code enforcement, building inspection, economic and neighborhood development and housing activities of the city.

(C) *Personnel policy.* The Council may provide for policies concerning personnel matters consistent with its authority, as it deems necessary.

§ 30.03 MUNICIPAL ELECTION.

(A) *Election day.* The election day is the first Tuesday after the first Monday in November in even-numbered years. Municipal officials elected on election day take office as provided by law and the City Charter.

(B) *Primary election.* The municipal primary election must be on the day designated by state law and according to the provisions in City Charter § 4.01.

(2001 Code, § 200.01)

§ 30.04 SALARIES.

(A) The Mayor's salary is \$8,910 per year.

(B) A Council member's salary is \$7,150 per year.

(2001 Code, § 200.03) (Ord. 02-09, passed - -; Ord. 04-10, passed - -; Ord. 10-22, passed - -; Ord. 12-16, passed - -)

§ 30.05 BACKGROUND INVESTIGATIONS.

(A) *Purpose and intent.* The purpose and intent of this section is to establish regulations that will allow the city to access public and private databases for the specific non-criminal purpose of employment background investigations for applicants who apply for city employment for the positions described in division (B) below, and for licensing background investigations for the licenses described in division (C) below.

(B) *Criminal history employment background investigations; background investigation required.* The city is hereby required to do a criminal history background investigation on applicants for employment with the city, city employees, as well as city volunteers that work with children or vulnerable adults, unless the Assistant City Manager concludes that a background investigation is not needed.

(1) *Background investigation databases.*

(a) In conducting the criminal history background investigation in order to screen employment applicants, the Police Department is authorized to access:

1. Data maintained in the State Bureau of Criminal Apprehensions (BCA) Computerized Criminal History information system in accordance with BCA policy; and
2. Other public and private databases that are authorized by the applicant.

(b) Any BCA data that is accessed and acquired shall be maintained or destroyed pursuant to the BCA and departmental policies. A summary of the results of the BCA data may be released by the Police Department to the Assistant City Manager or the City Manager and other supervisors directly involved in the hiring process as needed. If the background information pertains to the City Manager, it may be released to the City Council as the hiring authority for that position.

(2) *Written authorization.*

(a) Before the investigation is undertaken, the applicant must authorize the investigation by written consent. The written consent must fully comply with the provisions of Minn. Stat. Chapter 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information.

(b) Except for the positions set forth in Minn. Stat. § 364.09, as it may be amended from time to time, the city will not reject an applicant for employment on the basis of the applicant's prior conviction unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor or misdemeanor punishable by jail.

(c) If the city rejects the applicant solely on the basis of the results of the background investigation, the city shall notify the applicant of the following:

1. The grounds and reasons for the denial;
2. The complaint and grievance procedure set forth in Minn. Stat. § 364.06, as it may be amended from time to time;
3. The earliest date the applicant may reapply for employment; and
4. That all competent evidence of rehabilitation will be considered upon re- application.

(C) *Criminal history license background investigations; background investigation required.*

(1) The Police Department is hereby required, as the exclusive entity within the city, to do a background investigation on the applicants, owners, officers, managers or directors (collectively "applicant") for the following licenses within the city:

- (a) Sexually oriented establishments;
- (b) Carnivals;
- (c) Consumption and display permits;
- (d) Gambling;
- (e) Intoxicating liquor and 3.2% malt liquor;
- (f) Massage therapy (business and personal);
- (g) Motor vehicle sales and rentals;
- (h) Pawnbrokers;

- (i) Precious metal dealers;
- (j) Peddlers, solicitors and transient merchants;
- (k) Rental housing evaluators/inspectors;
- (l) Residential rental dwellings;
- (m) Special events;
- (n) Tattoo and body art establishments business; and
- (o) Tobacco.

(2) Background investigation databases: in conducting the criminal history background investigation in order to screen license applicants, the Police Department is authorized to access:

- (a) BCA data in accordance with BCA policy; and
- (b) Other public and private databases that are authorized by the applicant.

(3) Any BCA data that is accessed and acquired shall be maintained or destroyed pursuant to the BCA and departmental policies. A summary of the results of the BCA data may be released by the Police Department to the City Council, the City Clerk or other city staff involved in the license approval process.

(4) Written authorization: before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation.

(5) The written consent must fully comply with the provisions of Minn. Stat. Chapter 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information.

(6) Except for the positions set forth in Minn. Stat. § 364.09, as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the applicant's prior conviction unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor, or misdemeanor punishable by jail.

(7) If the city rejects the applicant solely on the basis of the results of the background investigation, the city shall notify the applicant of the following:

- (a) The grounds and reasons for the denial;
- (b) The complaint and grievance procedure set forth in Minn. Stat. § 364.06, as it may be amended from time to time;
- (c) The earliest date the applicant may reapply for the license; and
- (d) That all competent evidence of rehabilitation will be considered upon re-application.

(2001 Code, § 1003) (Ord. 10-19, passed - -; Ord. 12-07, passed - -)

CHAPTER 31: CITY ORGANIZATIONS

Section

- 31.01 Planning Commission
- 31.02 Board of Appeals and Adjustments
- 31.03 Parks and Recreation Advisory Committee

§ 31.01 PLANNING COMMISSION.

(A) *Establishment.* Pursuant to City Charter § 2.02, there is hereby established a Planning Commission.

(B) *Duties.* The Commission will perform the duties imposed on it by the zoning and subdivision regulations, and by the Minnesota Municipal Planning Act. The Commission is the planning agency of the city designated pursuant to Minn. Stat. § 462.354, as it may be amended from time to time.

(C) *Members.* The Planning Commission shall consist of seven members who are appointed by the Mayor and confirmed by the City Council. The City Attorney, Zoning Administrator, Community/Economic Development Director and one member of the City Council may be ex-officio members without the right to vote.

(D) *Terms.* The term of a member is three years. Members will hold offices until March of their expiring term or until their successors are appointed and qualified.

(E) *Absences.* The Secretary of the Commission will notify the Council when a member has three consecutive unexcused absences from the regular monthly Commission meetings. Upon receipt of the notice by the Council, the office of that member may be considered vacant.

(F) *Organization.* The Commission will elect a chair from among its members for a term of one year, and may create other offices as it deems necessary. The City Manager will appoint a person to act as Secretary of the Commission. The Commission will hold the number of meetings necessary to transact its business. It will adopt rules for the transaction of business. A quorum for the purpose of making recommendations to the City Council is a majority of all the voting members of the Commission. The Commission will keep a record of its resolutions and acts.

(G) *Official map.* The Commission, with the assistance of the Zoning Administrator may prepare an official map of the city streets and future street extensions in the city.

(H) *Special meetings; charges.* To defray administrative costs of special meetings of the Commission, a fee will be paid by the person requesting the meeting. The fee is set pursuant to § 34.03.

(I) The Planning Commission shall act in a purely advisory manner to the City Council, making its recommendations in all cases referred to it and transmitting its recommendations to the City Council for final action.

§ 31.02 BOARD OF APPEALS AND ADJUSTMENTS.

(A) *Establishment.* Minn. Stat. § 462.354, as it may be amended from time to time, requires any municipality having a zoning ordinance in effect, to provide for a board of adjustments and appeals. Pursuant to City Charter § 2.02, there is hereby established a Board of Appeals and Adjustments.

(B) *Duties.* The Board of Appeals and Adjustments will perform the duties imposed on it by the zoning and subdivision regulations and by the Municipal Planning Act, including the following:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Zoning Administrator;

(2) To hear and decide requests for variances from the literal provisions of this chapter; and

(3) To interpret the meaning of this chapter in cases of ambiguity and to make rulings with respect to the application of the zoning ordinance.

(C) *Members.* The Chairperson of the Planning Commission and members of the Planning Commission shall constitute a Committee of Adjustments.

(D) *Organization.* Meetings shall be held at the call of the Chairperson and at other times as the Committee may determine. The Chairperson, or the acting Chairperson, may request the attendance of witnesses. The Committee of Adjustments shall keep minutes of its proceedings and shall keep records of its resolutions and acts.

(Ord. passed 10-11-1963)

§ 31.03 PARKS AND RECREATION ADVISORY COMMITTEE.

(A) *Establishment.* Pursuant to § 2.02 of the City Charter, there is hereby established a Parks and Recreation Advisory Committee.

(B) *Members.* The Parks and Recreation Advisory Committee shall consist of seven members who are appointed by the City Council, with an effort made toward equal ward representation. A representative from the Athletic Association shall be an ex-officio member of the Committee without the right to vote.

(C) *Duties.* The duties of the Committee shall be:

(1) To perform fact-finding tasks as requested by the city pertaining to parks and recreation;

(2) To act in an advisory capacity to the City Council in matters pertaining to parks and recreation, and to cooperate with other governmental agencies and civic groups in the advancement and cooperation of sound park and recreation planning and programming;

(3) To recommend policies on recreation service to the City Council; and

(4) To have periodic inventories made of recreation services that exist or may be needed and interpret the needs of the public to the City Council.

(D) *Terms.* The term of a member is two years. Members will hold offices until March of their expiring term or until their successors are appointed and qualified.

(E) *Absences.* The Chair will notify the Council when a member has three consecutive unexcused absences from the regular monthly meetings. Upon receipt of the notice by the Council, the office of that member may be considered vacant.

(F) *Organization.* The Committee will elect a chair from among its members for a term of one year, and may create other offices as it deems necessary. The City Manager will appoint a person to act as Secretary of the Committee. The Committee will hold the number of meetings necessary to transact its business. A quorum for the purpose of making recommendations to the City Council is a majority of all the voting members of the Committee. The Committee will keep a record of its resolutions and acts.

(2001 Code, § 305.03)

CHAPTER 32: PERMIT PROCEDURES

Section

General Provisions

32.01 Policy and purpose

32.02 Application

32.03 Fees

Permit Procedures

32.15 Permit required

32.16 Trades, professions, businesses and privileges requiring permits

32.17 Application for permit

32.18 Insurance coverage

32.19 Building permit expiration

32.20 Inspections

Special Events Permit

32.35 General background

32.36 Permit required

32.37 Exemptions

32.38 Permit application

- 32.39 Investigations
- 32.40 Insurance requirements
- 32.41 Escrow deposit
- 32.42 Inspections
- 32.43 Application consideration
- 32.44 Indemnification agreement
- 32.45 Revocation of permit
- 32.46 Unlawful to exceed the scope of the permit
- 32.47 Noise regulation

Cross-reference:

Related provisions pertaining to businesses, see Title XI

GENERAL PROVISIONS

§ 32.01 POLICY AND PURPOSE.

By the enactment of this section, the City Council intends to establish a uniform system for the issuance, revocation, suspension, and renewal of licenses and permits for all activities for which the city code requires licenses and permits.

(2001 Code, § 1000.01)

§ 32.02 APPLICATION.

When a provision of the city code requires a license or a permit but contains no procedure for its issuance, revocation, suspension or renewal, the provisions of this section apply.

(2001 Code, § 1000.03)

§ 32.03 FEES.

The City Council establishes the fees for licenses and permits by City Council resolution.

(2001 Code, § 1000.05)

PERMIT PROCEDURES

§ 32.15 PERMIT REQUIRED.

(A) It is unlawful to conduct any activity in the city for which the city code requires a permit without first obtaining the permit.

(B) Persons must obtain permits pursuant to this section.

(2001 Code, § 1015.01)

§ 32.16 TRADES, PROFESSIONS, BUSINESSES AND PRIVILEGES REQUIRING PERMITS.

(A) The following activities in the city require permits:

(1) Certain provisions of the Fire Prevention Code, Chapter 91;

(2) Fire suppression equipment installations:

(a) Sprinkler systems;

(b) Standpipe or riser pipe; and

(c) Fire hose cabinets.

(3) House drain and sewer permits:

(a) Exterior drain pipe work on private property; and

(b) Drain pipe work in public easement or right-of-way.

(4) All mechanical work, including, but not limited to, hot water and warm air heating and sheet metal, air conditioning and refrigeration, gas burner and steamfitting, and ventilation;

(5) Moving buildings;

(6) Plumbing:

(a) Garbage grinders and dishwashers - residential and commercial;

(b) Flammable waste traps;

(c) Water heater (gas or electric);

(d) Gas clothes dryers and ranges and other gas devices;

(e) Vacuum breaker unit for lawn sprinkler systems;

(f) Swimming pools; and

(g) Manometer final test.

(7) Signs;

(8) Small animal exceptions;

(9) Fences over four feet in height;

(10) Driveways that access onto a right-of-way, including driveway apron replacements and curb cuts;

(11) Excavation/grading;

(12) General contracting;

(13) Commercial parking lots;

(14) Obstructions in the right-of-way;

(15) New installations or replacement of sump pumps; and

(16) Landscaping in the right-of-way; other than small plantings.

(B) This section governs all permits issued to any person for any trade, profession, business or privilege in the city for which the city code requires a permit; however, the requirements of this section may be supplemented by other sections of the city code.

(2001 Code, § 1015.03)

§ 32.17 APPLICATION FOR PERMIT.

Application for a permit is made to the Clerk on forms furnished by the city. Incomplete applications will be returned to the applicant.

(A) *Application contents.* The application must contain the following information:

- (1) Description of the building, work or activity to be performed;
- (2) Description of the site where the building, work or activity will be performed, by lot, block, tract, house and street address, or similar description that will readily identify and locate the site;
- (3) Description of the nature and extent of the building, work or activity;
- (4) Valuation of the costs of the proposed building, work or activity;
- (5) Other information that the Building Official or other duly authorized persons may require under the city code; and
- (6) Declaration that the facts and representations made in the application are true and correct. The person, office or agent of a corporation applying for the permit must sign the declaration.

(B) *Permit fee.*

- (1) *Establishment.* Permit fees are established by City Council resolution.
- (2) *Payment.* The city must collect all permit fees and other fees and charges in the city code or any Council resolution before the City Clerk, Building Official or other duly authorized persons may issue any permit.
- (3) *Investigative fees.* Except as otherwise specifically provided in the city code, if a person begins building, work or any activity of any kind for which a permit from the city is required or continues to do work after a permit has expired without having secured or renewed the necessary permit, the person must, when subsequently obtaining the permit, pay an investigative fee equal to twice the permit fee as provided by the Building Code.

(2001 Code, § 1015.05) (Ord. 10-11, passed - -)

§ 32.18 INSURANCE COVERAGE.

In situations where the city code requires insurance of permittees, the applicant must file with the City Clerk a certificate of insurance from an insurance company duly licensed and qualified to do business in the state on a form approved by the City Attorney.

(A) *Coverage requirements.* The insurance policy must provide the coverages and types of insurance not less than the amounts required by the city.

(B) *Coverage changes and cancellation.* The applicant may not cancel or change the insurance without 30 days prior written notice to the City Clerk by certified mail. The certification of insurance must be continuously in effect until 30 days after receipt of the written notice of cancellation or change; provided however, the certification must not extend for more than two years.

(2001 Code, § 1015.07)

§ 32.19 BUILDING PERMIT EXPIRATION.

(A) *Expiration of building permits.*

(1) Every permit issued shall expire unless the work authorized by the permit is commenced within 180 days following issuance of the permit, or if the work authorized by the permit is suspended or abandoned for a period of 180 days after the work is commenced.

(2) The Building Official may grant one extension of time in writing for a period of not more than 180 days. The extension shall be requested in writing prior to the expiration of the permit and justifiable cause shall be demonstrated.

(B) *Time limitation for exterior work completion.* Any exterior work included in a building permit for residential one- or two-family dwellings must be completed within 180 days following the date of issuance of the permit. If not completed within 180 days, that portion of the building permit for exterior work shall expire.

(C) *Recommencing work after expiration of permit.*

(1) Once a building permit or portion thereof expires and no extension has been granted or the extension period has expired, before work can be recommenced, a new permit must be obtained and the fee shall be one-half of the original fee that was charged, provided there has been no change in the original plans, specifications for the building, work or activity.

(2) Work continued after the expiration of a building permit and prior to the issuance of a new permit shall be considered work begun prior to the issuance of a permit and subject to an investigative fee, as described in § 32.17(B)(3).

(2001 Code, § 1015.12) (Ord. 10-11, passed - -)

§ 32.20 INSPECTIONS.

An applicant or license holder must allow the city to inspect the permitted premises for the purpose of ensuring compliance with the law, at any time it is open, occupied, permission is granted or court order is issued.

(2001 Code, § 1015.13)

SPECIAL EVENTS PERMIT

§ 32.35 GENERAL BACKGROUND.

(A) Purpose and intent.

(1) This subchapter governs the time, place and manner of holding certain special events on city streets, on city property and on private property when an event's impact upon the health, fire, law enforcement, public safety, transportation or other services exceeds those regularly provided to that property.

(2) This subchapter is intended to promote the health, safety and welfare of all residents and visitors of the city by ensuring that special events do not create disturbances, become nuisances, a menace or threaten life, health and property, disrupt traffic or threaten or damage private or public property.

(3) It is not the intent of the City Council by enacting this subchapter to regulate in any manner the content of speech or infringe upon the right to assemble, except for regulating the time, place and manner of speech and assembly and this subchapter should not be interpreted or construed otherwise.

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

APPLICANT. Any person or organization who seeks a special event permit to conduct or sponsor an event within the city.

PERMITTEE. A person to whom a special event permit is issued.

SCHOOL. An institution or place for instruction or education where 25 or more persons receive a full course of educational instruction with an organized body of teachers associated for pursuit and dissemination of knowledge.

SPECIAL EVENT. An event involving 300 people or more including: any concert, parade, fair, show, festival, carnival, rally, party, filming of a movie, video or television show, motorcade, run, street dance, bike-a-thon, race, walk, athletic event, combative sport contest, or other attended outdoor entertainment or celebration that is to be held in whole or in part upon publicly owned property or public right-of-way, or, if held wholly upon private property, will nevertheless affect or impact the ordinary and normal use by the general public of public property or public rights-of-way within the vicinity of the event.

(2001 Code, § 1017.01) (Ord. 10-15, passed - -)

§ 32.36 PERMIT REQUIRED.

Any person desiring to conduct or sponsor a special event in the city, not exempt under § 32.37, shall obtain a permit from the city.

(2001 Code, § 1017.03) (Ord. 10-15, passed - -)

§ 32.37 EXEMPTIONS.

A special event permit is not required for the following types of events:

- (A) Graduation parties, weddings, funerals or wedding or funeral processions;
- (B) Any event involving 299 or fewer people and that does not involve any alcohol;

(C) The use of traditional public forums as alternative channels of communication by the public, provided that the use is for the free exercise of constitutionally protected activities and does not disrupt or interfere with traffic on public streets or the use of public places by other members of the public;

(D) Events sponsored by the city and its agencies;

(E) Events sponsored by a school;

(F) Non-city sponsored events on city or county park or recreation property within the city, as long as required rental permits are obtained and rental requirements are met;

(G) Fund raisers or charitable events; or

(H) Golf tournaments.

(2001 Code, § 1017.05) (Ord. 10-15, passed - -)

§ 32.38 PERMIT APPLICATION.

(A) An application for a permit must be made to the Licensing Department upon forms provided by the city.

(B) After the city has received a completed application, including all required documentation, the appropriate fees and any necessary investigations or inspections, the permit will be submitted to the City Council for consideration.

(C) Incomplete applications will be rejected by the Licensing Department and will not be submitted to the City Council.

(D) The applicant shall be required to submit the following information:

(1) The name and address of the person or organization conducting or sponsoring the event and full name, address and phone number of contact person, and dates of birth as required to complete a background investigation;

(2) The date(s), time(s) and place of the event to be held;

(3) Whether the persons conducting the event or the officers of the organization sponsoring the event are over 18 years of age; and whether persons have been convicted of any crimes other than minor traffic offenses;

(4) The estimated numbers of special event staff, participants and spectators;

(5) The type and description of the special event and a list of all activities to take place at the special event;

(6) The name, address and telephone number of any entity providing the entertainment, the type of entertainment and whether amplified or non-amplified music or singing will be part of the entertainment;

(7) All security plans including the type of security, number of personnel to be employed and any perimeter fencing or barricades;

(8) Any public health plans, including supplying water to the site, solid waste collection and provision of toilet facilities;

(9) The proposed location(s) of the special event, including a map of the proposed area(s) to be used that clearly identifies the route (if applicable), security measures including fencing and/or barricades, food and beverage locations, waste collection sites, toilet facilities, staging areas, entertainment areas and any other information the city deems appropriate;

(10) A statement as to whether food or alcohol will be served or sold at the special event and if so, proper state licenses or permits shall be submitted with the application;

(11) If the event is to occur within a residential area in which a street is to be closed, the applicant must submit a written statement from 70% of property owners whose vehicular access to their properties will be affected, consenting to the street closure;

- (12) The appropriate insurance certificate(s) required in § 32.40;
- (13) All other required permits or licenses from the state, county or city;
- (14) The signature of the applicant; and
- (15) Other information as the city shall require.

(2001 Code, § 1017.07) (Ord. 10-15, passed - -)

§ 32.39 INVESTIGATIONS.

(A) *Public safety investigation.* The application shall be referred to the Police and Fire Departments for investigation into the contents of the application, as well as inspections of the requested location(s). The Police and Fire Departments shall provide a recommendation to the City Council as to matters of public safety.

(B) *Background investigation.* In order to protect the general welfare of the public, certain permit applications may require a personal background and/or business background investigation. If so required, the investigations will be conducted pursuant to Chapter 110, specifically § 110.03, and § 30.05(C), including the payment of the appropriate fees therefor. The applicant will be informed if it is deemed necessary to perform a background investigation.

(2001 Code, § 1017.09) (Ord. 10-15, passed - -)

§ 32.40 INSURANCE REQUIREMENTS.

(A) The applicant or sponsor of a special event must possess or obtain liability insurance to protect against loss from liability imposed by law for damages on account of bodily injury or property damage arising from the special event.

(B) A certificate of insurance must be filed with the city prior to issuance of the special events permit.

(C) The certificate of insurance must name the city, its officials, employees and agents as additional insureds.

(D) Insurance coverage must be maintained for the duration of the special event.

(1) *Minimum limits.* Insurance coverage must be a commercial general liability policy. The minimum limits must be at least \$1,000,000. If alcoholic beverages are to be sold or distributed at the special event, the policy must also include an endorsement for liquor liability. The City Council may require additional endorsements depending upon the type of special event and proposed activities.

(2) *Waiver or reduction of required limits.* The city may waive or reduce the insurance requirements of this section under the following circumstances:

(a) The applicant or officer of the sponsoring organization signs a verified statement that it believes that the special event's purpose is First Amendment expression and that the cost of obtaining the insurance is so financially burdensome that it would constitute an unreasonable burden on the right of First Amendment expression;

(b) The applicant or an officer of the sponsoring organization signs a verified statement that the insurance coverage required by this section is impossible to obtain; or

(c) The City Council determines that the insurance requirements are in excess of the reasonable risk presented by the proposed special event.

(2001 Code, § 1017.11) (Ord. 10-15, passed - -)

§ 32.41 ESCROW DEPOSIT.

(A) The applicant or sponsor of the special event involving the sale of food or beverages for immediate consumption, erection of structures, animals, water aid stations or another activity likely to create a substantial need for cleanup or extraordinary security measures due to public safety may be required by the city to provide an escrow deposit prior to issuance of the special event permit.

(B) The deposit shall be in an amount set by the City Council. The deposit will be returned to the applicant if the area used for the

special event has been cleaned and restored to the same condition as it existed prior to the event and if no extraordinary security measures were required by the city for the event.

(C) If the property used for the event has not been properly cleaned or restored or if the city employed extraordinary security measures for public safety reasons, which were deemed necessary by the city, the applicant will be billed for the actual costs, less the escrow deposit.

(D) Failure to pay costs when due is a violation of the city code and may result in the issuance of an administrative citation and denial of any city approvals in the future.

(2001 Code, § 1017.13) (Ord. 10-15, passed - -)

§ 32.42 INSPECTIONS.

The applicant must allow Health Officials, representatives from the licensing staff and the Building Department to inspect the property and buildings or structures that will be used for the event for the purpose of ensuring compliance with the law.

(2001 Code, § 1017.15) (Ord. 10-15, passed - -)

§ 32.43 APPLICATION CONSIDERATION.

The City Council shall review the special event permit application and make a determination on whether to approve, deny or approve the permit with conditions and requirements as may be necessary to protect the public health, safety and welfare.

(A) *Permit denial.* The City Council may deny an application for a special event permit if it determines from a consideration of the application or other pertinent information, that:

- (1) The information contained in the application or supplemental information requested from the applicant is false or there is a material defect or omission in the application;
- (2) The applicant fails to supplement the application after having been notified by the city of additional information or documents needed;
- (3) The applicant fails to agree to abide by or comply with all of the conditions and terms of the special event permit;
- (4) The time, route, hours, location or size of the special event will unnecessarily disrupt the movement of other traffic within the area of the special event;
- (5) The special event is of the size or nature that requires the diversion of too many law enforcement officers to properly police the event, site and contiguous areas such that allowing the special event would unreasonably deny law enforcement protection to the remainder of the city and its residents;
- (6) Another special event permit application has already been approved to hold a different special event at the same time and place requested by the applicant or is so close in time and place as to cause undue traffic congestion, or the city is unable to meet the needs to provide for law enforcement and other city services for both special events;
- (7) The location of the special event would cause undue hardship for adjacent businesses or residents;
- (8) The location of the special event will substantially interfere with any construction or maintenance work scheduled to take place upon or along public property or right-of-way;
- (9) The special event would endanger the public health, safety or welfare;
- (10) The special event would seriously inconvenience the general public's use of public property, sendees or facilities;
- (11) The applicant fails to comply with the insurance requirements or the applicant's insurance lapses or is canceled;
- (12) The special event would create or constitute a public nuisance;
- (13) The special event would be likely to cause significant damage to public property or facilities;
- (14) The special event would engage in or encourage participants to engage in illegal acts;

(15) The applicant cannot meet or is unwilling to meet all of the requirements of this subchapter;

(16) The applicant fails to submit all application fees, investigation fees, inspection fees or the escrow deposit; and

(17) Other issues in the public interest that are identified by the City Council.

(B) *Permit approval with conditions.*

(1) The City Council may condition the approval of a special event permit by imposing reasonable conditions concerning the time, place and manner of the special event, if those conditions are necessary to protect the safety of persons and property, provided that the conditions shall not unreasonably restrict the right of free speech.

(2) Those conditions may include, but are not limited to:

(a) Alteration of the date(s), time(s), route or location of the special event proposed;

(b) Elimination of an activity at the special event which cannot be mitigated to a point as to ensure public safety and welfare, or which causes undue liability to the city;

(c) Requirements concerning the staging and disbanding areas of a parade or other events occurring along a route;

(d) Requirements concerning the accommodation of pedestrian or vehicular traffic, including restricting the event to only a portion of the street or right-of-way;

(e) Requirements for the use of traffic cones or barricades;

(f) Requirements for the use of city personnel and equipment;

(g) Requirements for the provision of first aid or sanitary facilities at the special event;

(h) Requirements for the use of special event monitors and providing notice of the special permit conditions to the events' participants;

(i) Requirements or restrictions on the number and type of vehicles, animals or structures to be allowed at the special event and the inspection and approval of floats, structures and decorated vehicles by the city for safety purposes;

(j) Requirements for the use of garbage containers and the cleanup and restoration of any public property;

(k) Requirements for employing security personnel for the event or implementing specific security measures to ensure the safety of the public;

(l) Restrictions on the use of amplified sound;

(m) Requirements to provide notice of the special event to surrounding property owners;

(n) Requirements for an escrow deposit; and

(o) Restrictions on the sale or consumption of food and alcohol.

(2001 Code, § 1017.17) (Ord. 10-15, passed - -)

§ 32.44 INDEMNIFICATION AGREEMENT.

If the event, or any portion of the event is to be held on city property or right-of-way, then prior to the issuance of a special event permit, the permit applicant and authorizing officer of the sponsoring organization, if any, must sign an agreement to indemnify, defend and hold the city, its officials, employees and agents harmless from any claim that arises in whole or in part out of the special event, except any claims arising solely out of the negligent acts or omissions of the city, its officials, employees and agents.

(2001 Code, § 1017.19) (Ord. 10-15, passed - -)

§ 32.45 REVOCATION OF PERMIT.

The city reserves the right to immediately order a cease and desist of any and all activities for the permitted event and revoke the

permit under the following circumstances:

- (A) By a law enforcement officer when, by reason of disaster, public calamity, riot or other emergency, the law enforcement officer determines that the safety of the public or property requires the revocation;
- (B) By a law enforcement or public safety officer for other public safety reasons;
- (C) By the Police Chief if the permittee violates a material term of this subchapter, or a condition of the permit; or
- (D) By the City Manager if he or she finds that the permit has been issued based upon false information. Notice of that action revoking a permit under this subdivision shall be delivered in writing to the permittee by personal service or certified mail at the address specified by the permittee in its application.

(2001 Code, § 1017.21) (Ord. 10-15, passed - -)

§ 32.46 UNLAWFUL TO EXCEED THE SCOPE OF THE PERMIT.

The special event permit authorizes the special event permittee or sponsor to conduct only such a special event as is described in the permit, and in accordance with the terms and conditions of the permit. It is unlawful for the permittee or sponsor to willfully violate the terms and conditions of the permit.

(2001 Code, § 1017.23) (Ord. 10-15, passed - -)

§ 32.47 NOISE REGULATION.

Each person who is issued a special event permit shall comply in all respects with Chapter 94.

(2001 Code, § 1017.25) (Ord. 10-15, passed - -)

CHAPTER 33: POLICIES AND PROCEDURES

Section

- 33.01 Disposition of unclaimed property
- 33.02 Sale of unclaimed motor vehicles
- 33.03 Prevailing wage rates for financially publicly assisted projects

§ 33.01 DISPOSITION OF UNCLAIMED PROPERTY.

(A) *Custody of property.*

(1) The Chief of Police will take custody of all personal property, including lost money, lawfully coming into the possession of the city and city employees in the course of municipal operations and remaining unclaimed by the owner.

(2) The Chief of Police must retain the property in a safe place for a period of 90 days ("hold period"), unless claimed by the true owner with satisfactory proof of ownership.

(3) For the purposes of this section, **SAFE PLACE** may mean depositing monies with the City Finance Department, provided the money does not have value beyond its face value due to its age, rarity or numismatic value. The Chief of Police must keep a record of the property, including its disposition.

(B) *Disposition of property.*

(1) Property held in custody by the Chief of Police and not claimed by the true owner during the hold period will be deemed abandoned.

- (2) The Chief of Police may appropriately dispose of abandoned property following the hold period in one of the following ways:
- (a) Sell the property at a public sale following ten days' published notice in the official newspaper;
 - (b) Return the lost property or funds to its finder;
 - (c) Convert usable property to city use;
 - (d) Donate the property to a tax-exempt, non-profit organization;
 - (e) Deposit unclaimed funds into the city's General Fund, except as provided in division (G) below;
 - (f) Scrap usable property or property of little or no value.

(3) The costs of the sale, including, but not limited to, storage fees, publication fees and administrative expenses will be taken out of the proceeds of the public sale. Property not purchased at a public sale may be disposed of by the Chief of Police in any reasonable manner.

(C) *Claims by owner.* During the hold period, the owner may claim the property by providing satisfactory proof of ownership and paying the city any storage or maintenance costs, pursuant to the fee schedule.

(D) *Summary disposal.* The Chief of Police may dispose of unclaimed property without notice and in a summary manner when the Chief of Police believes this to be in the public interest and if the Chief of Police determines that the property:

- (1) Is of a dangerous or perishable nature;
- (2) Is contraband;
- (3) Has no resale value; and/or
- (4) Cannot be legally or safely sold at public sale.

(E) *Disposition of funds.* All money that was received from the sale of abandoned property, less the costs of the sale, shall be deposited into the city's General Fund, except as provided in division (G) below or unless otherwise required by state law.

(F) *Owner's claim after sale.* 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, less the costs of the sale.

(G) *Special provisions; Police Department.* Money and other property lawfully seized by, or voluntarily surrendered to, the city at the scene of a crime or during an official police investigation must be retained by the Chief of Police in a safe place until a legal disposition is determined or the property is deemed abandoned under division (B) above. If not lawfully claimed by the true owner with adequate proof of ownership during the hold period, non-monetary property may be disposed of pursuant to divisions (B)(2)(a) through (B)(2)(d) above. Sale proceeds or seized money shall be deposited in the Police Department's forfeiture and seizure account to be used only for law enforcement purposes or as otherwise specified by statute.

(H) *Disposition of abandoned motor vehicles.* The Chief of Police must dispose of abandoned motor vehicles by following the procedure in Minn. Stat. §§ 168B.01 through 168B.101, as they may be amended from time to time.

(Ord. 13-02, passed 5-28-2013)

§ 33.02 SALE OF UNCLAIMED MOTOR VEHICLES.

The Abandoned Motor Vehicle Law is hereby adopted by reference. Minn. Stat. §§ 168B.01 through 168B.101, as they may be amended from time to time, are adopted by reference.

(2001 Code, § 1315.01)

§ 33.03 PREVAILING WAGE RATES FOR FINANCIALLY PUBLICLY ASSISTED PROJECTS.

(A) *Purpose.* It is in the public interest that developments and buildings constructed with financial assistance from the city be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on the buildings and developments be compensated according to the real value of the services they perform and that wages of laborers,

workers and mechanics on developments and buildings financially assisted by city funds be comparable to wages paid for similar work in the community as a whole.

(B) *Definition.***FINANCIALLY-ASSISTED PROJECT** means any private development or redevelopment involving either the construction of new buildings or the remodeling, reconstructing or expanding of existing buildings under the following conditions: the city or EDA provides direct financial assistance to the development by any of the following means:

- (1) Grants;
- (2) Tax increment financing;
- (3) Revenue bonds or general obligation bonds;
- (4) Loans; or
- (5) Business subsidies.

(C) *Contractor requirement for payment of prevailing wage rate.* For any financially-assisted project, the developer shall require the following:

- (1) The contractor and any subcontractor, agent and other person doing or contracting to do all or a part of the work on the project must pay at least the prevailing wage rate to all laborers and mechanics employed directly on the project work site; and
- (2) Upon request of the city, the contractor and any subcontractor, agent and other person doing or contracting to do all or a part of the work of the project shall within five working days supply the city with a copy of payrolls showing wages paid, and a wage compliance statement with respect to wages paid each of its mechanics and laborers employed directly on the project work site. In the event such statements are not provided or in the event the statements disclose that the required prevailing wage is not being paid, then the city shall have the right to either withhold payments to the developer for those periods of noncompliance or consider the developer in default and proceed with its legal remedies. Any withheld payments shall be equal to the difference between the wages paid and the prevailing wage rate for the period of noncompliance. During the course of and upon completion of the contract work, the city shall have the right to require an audit of the contractor's books to determine compliance or noncompliance. Each contractor and subcontractor shall retain copies of the weekly payrolls for a period not less than one year after completing of the work.

(D) *Exceptions.*

- (1) The requirements set forth in division (C) above do not apply to wage rates of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments that have a fixed place of business from which they regularly supply processed or manufactured materials or products; provided, however, the requirements set forth in division (C) above do apply to laborers or mechanics who deliver material by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.
- (2) The requirements set forth in division (C) above do not apply to financially-assisted projects that involve the housing replacement program or that involve projects in which the financial assistance is less than \$50,000.

(2001 Code, § 330)

CHAPTER 34: FEES, FUNDS AND FINANCE

Section

General Fees, Funds and Finance

- 34.01 Emergency service and special equipment charges
- 34.02 Watershed Management Tax District
- 34.03 Zoning application fees and deposits
- 34.04 Alarm fees
- 34.05 Unpaid special assessments or service charges

34.06 Sidewalk and trail special improvement district

34.07 Electric utility; tax

Repeat Nuisance Service Calls Fee

34.15 Purpose

34.16 Definitions

34.17 Nuisance service call fee imposed

34.18 Appeal

34.19 Exceptions

GENERAL FEES, FUNDS AND FINANCE

§ 34.01 EMERGENCY SERVICE AND SPECIAL EQUIPMENT CHARGES.

(A) *Purpose and intent.* It is the purpose of this section to establish emergency service and special equipment charges for emergency services provided by the Public Safety Department described in this section, pursuant to Minn. Stat. §§ 415.01, 366.011 and 366.012, as they may be amended from time to time.

(B) *Application.* This section applies to emergency services including, but not limited to, fire, rescue, technical rescue, hazardous materials, medical and related services.

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

EXCAVATOR. A person who conducts an excavation.

MOTOR VEHICLE. Any self-propelled vehicle designed and originally manufactured to operate primarily upon public roads and highways, and not operated exclusively upon railroad tracks. It includes any vehicle propelled or drawn by a self propelled vehicle. This includes semi trailers and boats. It does not include snowmobiles, manufactured homes or all terrain vehicles.

MOTOR VEHICLE OWNER. Any person, firm, association or corporation owning or renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

PERSON. The state, a public agency, a local governmental unit, an individual, corporation, partnership, association or other business or public entity or a trustee, receiver, assignee or personal representative of any of them.

PUBLIC SAFETY DEPARTMENT. The Police Department and the Fire Department.

SPECIAL EQUIPMENT. Heavy or specialized public safety equipment that the Public Safety Department does not currently own but that it must rent or lease to render public safety services and includes, but is not limited to, cranes, bulldozers, back hoes and trench boxes.

UNDERGROUND PIPELINE UTILITY. An underground line, facility, system and its appurtenances used to produce, store, convey, transmit or distribute gas, oil, petroleum products and other similar substances.

(D) *Conflicts.* In the event of any conflict between the provisions of this section and applicable provisions of state law, rules or regulations, the latter shall prevail.

(E) *Emergency services charges.*

(1) *Authority.* The city may charge a property owner for all expenses associated with the use of any special equipment that is required to render emergency services.

(2) The collection of emergency services charges shall be conducted as authorized in Minn. Stat. § 366.011, as it may be amended from time to time.

(3) The collection of unpaid emergency services charges shall be conducted as authorized in Minn. Stat. § 366.012, as it may be amended from time to time.

(4) Emergency service charges incurred by the Public Safety Department shall be imposed pursuant to the fee schedule adopted by ordinance or resolution, in the following circumstances:

(a) *Technical rescue.*

1. Any incident response such as, but not limited to to a rescue on the water, ice, confined space, structured collapse, terrorism, trench, high or low level where special equipment is required.

2. An invoice will be sent to the persons, corporation, business owner receiving the service or the owner's insurance company, based on the number of hours spent responding to the incident, any special equipment and materials needed to respond to the incident, and personnel costs.

(b) *Underground pipeline utility breaks.*

1. Any incident response to an underground pipeline utility break.

2. An invoice will be sent to the excavator or person responsible for the pipeline utility break, based on the number of hours spent responding to the incident, any special equipment and materials needed to respond to the incident, and personnel costs.

(c) *Hazardous materials.*

1. Any incident response to a release of hazardous material from its container, or the threat of a release of a hazardous material from its container, chemical reaction or other potential emergency as the result of a hazardous material.

2. An invoice will be sent to the person responsible for the hazardous material or transportation of the hazardous material, based on the number of hours spent responding to the incident, any special equipment and materials needed to respond to the incident, and personnel costs.

§ 34.02 WATERSHED MANAGEMENT TAX DISTRICT.

(A) *Establishment.* Pursuant to Minn. Stat. § 103B.245, as it may be amended from time to time, the city establishes a Watershed Management Tax District for the purpose of paying capital costs, as well as normal and routine maintenance costs of the water management facilities described in the capital improvement program.

(B) *Boundary.* The boundary of the Watershed Management Tax District is the boundary of the city, and the area of the District is the area of the city.

(2001 Code, § 725)

§ 34.03 ZONING APPLICATION FEES AND DEPOSITS.

(A) *Forms.* Applications for zoning requests are made to the Zoning Administrator upon forms provided by the city.

(2001 Code, § 1020.01)

(B) *Payment of fees.*

(1) The fees required for zoning requests must be paid to the Zoning Administrator and must be submitted with the application.

(2) No application will be considered complete without payment of the fee.

(2001 Code, § 1020.03)

(C) *Deposit of planner's and attorney's fees.*

(1) At the time the application is submitted, applicants must deposit a fee for the City Planner and City Attorney, pursuant to § 153.034(B).

(2) The deposit will be a credit toward all reasonable fees and expenses charged by the City Planner and the City Attorney to

investigate and make a recommendation to the City Council concerning the application. The applicant must pay all reasonable expenses and fees in excess of the deposit within 30 days of final action on the matter by the city.

(3) The city will return any excess amount to the applicant upon final action.

(2001 Code, § 1020.05)

(D) *Fees.* The following fees and deposits apply to zoning requests:

<i>Zoning Request</i>	<i>Fee</i>	<i>Deposit</i>
Conditional use permit	\$275 Residential \$275 Commercial	\$400 Residential \$800 Commercial
Interim use permit	\$175	No deposit
Proposed preliminary plat	\$275+\$2/lot	\$600 for 1-2 lots \$1,600 for 3 or more lots
Zoning Ordinance Text or Map Amendment	\$325	\$800
Special meetings of the Planning Commission	\$275	No deposit
Site plan approval	\$275	\$1,300
Vacation of rights-of-way	\$175	No deposit
Variance	\$100 Residential	\$400 Single \$500 Multiple variances
Variance	\$200 Commercial	\$600 Single \$700 Multiple variances
Zoning Letter	\$75 Standard Letter \$150 Detailed Letter	No deposit

§ 34.04 ALARM FEES.

(A) *Purpose.* The purpose of this section is to protect the public safety services of the city from misuse and to provide for efficient sendee to public safety alarm users.

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

ALARM BUSINESS OR RESIDENCE. Any premises within the city utilizing an alarm system which, when activated, necessitates a public safety response.

ALARM SYSTEM. Any alarm installation system designed to be used for the prevention or detection of burglary, robbery, fire or

any other type of emergency situation occurring on or at the alarm business or residence.

ALARM USER. The person, firm, partnership, association, corporation, company or organization of any kind who is in control of any building, structure or facility where an alarm system is maintained.

FALSE ALARM. An alarm signal eliciting a response by public safety personnel at an alarm business or residence when a situation requiring a response does not in fact exist, and which is caused by the activation of the alarm system through mechanical failure, alarm malfunctions, improper installation or the inadvertence of the owner or another. **FALSE ALARMS** do not include alarms caused by climactic conditions such as tornadoes, thunderstorms, utility line mishaps, violent conditions of nature or any other conditions that are clearly beyond the control of the alarm manufacturer, installer, owner or occupant. **FALSE ALARMS** do not include alarms occurring within the first 30 days of operation of a new alarm system.

PUBLIC SAFETY COMMUNICATIONS CENTER. The city facility used to receive emergency requests for service, usually resulting in the dispatching of a public safety response.

PUBLIC SAFETY PERSONNEL. A duly authorized city public safety employee, including an independent contractor.

(C) *False alarm fees.*

(1) *Number of responses.* Alarm users may report up to three false alarms requiring a public safety response per 12-month period without charge. A false alarm fee shall be imposed for more than three false alarms, as established by City Council resolution.

(2) *Appeal.* An alarm user required by the city to pay a false alarm fee as the result of a false alarm, may make a written appeal to the Police Chief within ten days of receipt of notice by the city of the false alarm fee. The Police Chief has authority to make a final determination whether the appellant should be charged with a false alarm fee, based on the circumstances.

(3) *Payment.* Payment of security false alarm fees must be paid to the city. Payment of fire false alarm fees must be paid to the Fire Department.

(D) *Alarm report.* When a security alarm user has incurred a security false alarm to which the Police Department responded, the alarm user will be sent a false alarm report, which must be completed and returned to the Police Department within ten days after it was received. The report shall describe actions taken or to be taken to discover and eliminate the cause of the false alarm. Failure to return a written report will be considered a violation of this section.

(Ord. 13-01, passed 4-8-2013)

§ 34.05 UNPAID SPECIAL ASSESSMENTS OR SERVICE CHARGES.

As provided in Minn. Stat. § 429.101, as it may be amended from time to time, unpaid special or service charges for all or any part of the cost of the activities set forth in division (A) below may be specially assessed against the benefitted property.

(A) *Service charges.* Service charges may be made by the city for all or any part of the cost of:

- (1) Snow, ice or rubbish removal from sidewalks;
- (2) Weed elimination from streets or private property;
- (3) Removal or elimination of public health or safety hazards from private property, excluding any structure included under the provisions of Minn. Stat. §§ 463.15 through 463.26, as they may be amended from time to time;
- (4) Installation or repair of water service lines, street sprinkling or other dust treatment of streets;
- (5) The trimming and care of trees and the removal of unsound trees from any street;
- (6) The treatment and removal of insect infested or diseased trees on private property;
- (7) The repair of sidewalks and alleys;
- (8) The operation of a street lighting system;
- (9) The operation and maintenance of a fire protection system; and
- (10) The operation and maintenance of a pedestrian skyway system.

(B) *Notice of work.* The city may, where it deems practical, allow the property owner or occupant to do the work upon reasonable notice, before the work is undertaken by or on behalf of the city.

(C) *Payment.* The city must provide the property owner or occupant 30 days after notice of billing, to make payment before the unpaid charges are made a special assessment.

(2001 Code, § 830.01)

§ 34.06 SIDEWALK AND TRAIL SPECIAL IMPROVEMENT DISTRICT.

(A) *Findings.* The City Council finds that all areas within the city should have safe pedestrian walkways and trails to and from schools and school bus stops, public transportation facilities and other services to the neighborhood and community. Minn. Stat. § 435.44, as it may be amended from time to time, authorizes a city to establish sidewalk and trail improvement districts to defray all or part of the total costs of sidewalk and trail construction and repair and apportion the cost to all parcels located within the district on a direct or indirect basis. The Council finds that the costs apportioned for such sidewalk and trail improvements are reasonably related to the improvements or repairs within the sidewalk and trail improvement district hereby established.

(B) *District established.* Based on Minn. Stat. § 435.44, as it may be amended from time to time, and the city's police powers, the City Council hereby establishes the Sidewalk and Trail Improvement District (the "District"), which includes all of the streets, sidewalks, trails, land and parcels within the boundaries of the city.

(C) *Assessment.* The City Council shall establish an assessment policy for all sidewalk or trail improvements or repairs within the District, as long as such assessments are applied on a uniform basis as to each classification of real estate. Where sidewalk or trail widths are wider than the standard width of a typical sidewalk or trail, the additional costs may be assessed as a direct benefit to the abutting property. An indirect benefit assessment may involve all parcels or tracts of land located in the District without regard to the location of the sidewalks or trails, as it is deemed that all parcels or tracts of land within the District are benefitted equally.

(D) *Assessment period.* The city may assess the costs on all sidewalk and trail improvements up to a maximum of five years on equal annual installments, plus interest on the unpaid balance.

§ 34.07 ELECTRIC UTILITY; TAX.

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

ELECTRIC COMPANY. Every person, firm, company, joint stock association or corporation engaged in the business of selling electricity for light, heat, power and other purposes for public or private use in the city.

GROSS EARNINGS. All sums received by the electric company from the sale of electric energy within the city, except all sums received by the company for electric energy supplied to the city for municipal services.

(B) *Tax imposed.* Every electric company must pay the city 5% of its monthly gross earnings derived from the sale of electricity within the city. The payment of the gross earnings tax must be in two installments. The first installment must be paid on or before July 31 and shall cover the period from January 1 through June 30. The second installment must be paid on or before January 31 and shall cover the period from July 1 through December 31.

(C) *Accounting.* For the purpose of ascertaining the gross earnings, each electric company must keep an accurate account of all sales within the city and must annually furnish the City Treasurer with an accounting of the sales. A qualified person from the electric company must verify the accounting.

(2001 Code, § 710)

REPEAT NUISANCE SERVICE CALLS FEE

§ 34.15 PURPOSE.

(A) The purpose of this subchapter is to protect the public safety, health and welfare by preventing over-consumption and misuse of law enforcement, emergency and city services.

(B) By adopting this subchapter, the city intends to impose and collect repeat nuisance service call fees from the persons responsible for the nuisance service call.

(2001 Code, § 955.01) (Ord. 09-06, passed - -)

§ 34.16 DEFINITIONS.

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

NUISANCE SERVICE CALL. A response to any activity, conduct or condition occurring within the city that unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any member of the public, or will tend to alarm, anger or disturb others. A ***NUISANCE SERVICE CALL*** includes, but is not limited to, a response to the following:

- (1) Any activity, conduct or condition violating the following provisions of the city code:
 - (a) Sections 150.020 through 150.023 (International Property Maintenance Code);
 - (b) Section 92.01 (public health nuisances);
 - (c) Sections 94.35 through 94.38 and § 95.01 (weeds), §§ 150.060 through 150.073 (vacant and hazardous buildings);
 - (d) Chapter 93 (parks and recreational areas);
 - (e) Chapter 90 (animals), Chapter 112 (sale, consumption and display of liquor, beer and wine);
 - (f) Chapter 72 (parking regulations);
 - (g) Section 72.05(D) (parked or stored motor vehicles);
 - (h) Section 94.18 (unsheltered storage of junk and inoperable or abandoned motor vehicles);
 - (i) Section 130.02 (assaults);
 - (j) Section 130.02 (falsely reporting a crime);
 - (k) Section 130.02 (negligent fires, dangerous smoking);
 - (l) Section 130.02 (dangerous weapons);
 - (m) Chapter 94 (nuisances).
- (2) Any activity, conduct or condition violating, the following provisions of the Zoning Code:
 - (a) Section 153.346(D) (location of parking facilities); and
 - (b) Section 153.348 (number of required off-street parking spaces).
- (3) Any activity or conduct violating Minn. Stat. § 609.78(4), as it may be amended from time to time (Misuse of 911);
- (4) Any activity, conduct or condition violating state laws prohibiting or regulating prostitution, gambling, controlled substances or use of firearms; or
- (5) Loud and boisterous conduct, noise and activity that disturbs the peace, or constitutes a public nuisance or disorderly conduct as defined by the state statutes.

REPEAT NUISANCE SERVICE CALL FEE. The fee upon the responsible party if the city has rendered services or responded for a nuisance service call on three or more occasions within the 12 months immediately preceding the current offense. The ***REPEAT NUISANCE SERVICE CALL FEE*** under this section shall be an amount set forth and duly adopted by City Council resolution.

RESPONSIBLE PARTY OR PARTIES. The owner, occupant or anyone having control of real property where the nuisance

service call occurred, or the person or persons responsible or involved in the nuisance service call, regardless of where the nuisance service call occurred.

(2001 Code, § 955.03) (Ord. 05-06, passed - -)

§ 34.17 NUISANCE SERVICE CALL FEE IMPOSED.

(A) *Notice.* After two nuisance service calls within 12 months, the city shall provide written notice to the responsible party or parties that subsequent nuisance service calls may result in the imposition of the repeat nuisance service call fee. The written notice shall:

(1) State the nuisance conduct, activity or condition that is or has occurred or is being maintained or permitted, and the dates of the nuisance conduct, activity or condition;

(2) State that the responsible party or parties may be subject to a repeat nuisance service call fee for a third nuisance service call and for every nuisance service call occurring thereafter within the noticed time period that involves the same property, unit, complex or persons, in addition to the city's right to seek other legal remedies or actions for abatement of the nuisance or compliance with the law;

(3) State the amount of the nuisance service call fee that will be due and payable;

(4) State that failure to pay may result in the costs being assessed against the owner's property or in the issuance of a criminal citation to the responsible party; and

(5) Be served personally or by U.S. mail upon the responsible party or parties at the last known address.

(B) *Imposition of the fee.* If, after written notice is served pursuant to this section, a subsequent nuisance service call occurs within that time period provided in the notice, then the city may impose the repeat nuisance service call fee upon the responsible party or parties, for the third nuisance service call and every nuisance service call occurring thereafter within the same noticed time period. The responsible party who received notice pursuant to division (A) above shall be responsible for payment of the repeat nuisance service call fee. The city may impose the nuisance service call fee on all responsible parties.

(2001 Code, § 955.05)

§ 34.18 APPEAL.

The responsible party or parties may appeal the imposition or amount of the fee by filing written notice pursuant to § 10.98(F) and requesting an administrative hearing, which shall be conducted as provided in § 10.98(G).

(2001 Code, § 955.07)

§ 34.19 EXCEPTIONS.

(A) *Medical emergencies.* Fees shall not be imposed for any medical-related emergency response except for medical-related emergencies, that are violations of Minn. Stat. § 609.78(4), as it may be amended from time to time.

(B) *Domestic incidents.* Fees shall not be imposed against the victim for a response to circumstances involving domestic-assault incidents or order for protection violations, except when the victim consented to a violation of a court order and the violation resulted in the response.

(C) *Landlords.* Fees shall not be imposed against a landlord for a response initiated by a tenant, unless the landlord was sent notice as set forth in § 34.17(A) and the landlord has not taken the necessary steps outlined in division (D) below.

(D) *STAR program participants.* Notices shall be sent according to § 34.17(A), but fees shall not be imposed against an owner who actively participates in the STAR Program, pursuant to § 150.042 as a Level 2 participant and if the owner and complex are actively working with the City Police Department on a coordinated plan to reduce and prevent future repeat nuisance service calls. If the city, in its sole discretion, finds that coordinated plan does not significantly reduce repeat nuisance service calls within six months after notice has been sent in accordance with § 34.17(A), this exception no longer applies and the fees shall be immediately due and payable.

TITLE V: PUBLIC WORKS

Chapter

- 50. WATER AND SEWER SYSTEM
- 51. LAWN SPRINKLING BAN
- 52. STORMWATER DRAINAGE UTILITY

CHAPTER 50: WATER AND SEWER SYSTEM

Section

- 50.01 Sewer connection outside city; conditions
- 50.02 Sewer connection required
- 50.03 South end sanitary sewer system
- 50.04 Water connections
- 50.05 Certain uses prohibited
- 50.06 Obstruction prohibited
- 50.07 Industrial use sewer strength charges
- 50.08 Discharge of prohibited clear water drainage; sump pumps
- 50.09 Stormwater illicit discharge and illicit connection

§ 50.01 SEWER CONNECTION OUTSIDE CITY; CONDITIONS.

The owner of property outside the limits of the city may connect or tap the city's sewer system if:

- (A) The property owner makes application to and receives a permit for the connection from the City of St. Paul and the City of West St. Paul; or
- (B) The sewer connection is made subject to the rules, regulations and requirements of the City of St. Paul and the City of West St. Paul.

(2001 Code, § 700.01)

§ 50.02 SEWER CONNECTION REQUIRED.

- (A) Any building used for human habitation or occupancy and located on property adjacent to a sewer main, or in a block through or to which the sanitary sewer system extends, shall be connected to the city sanitary sewer system by the end of the calendar year following the year within which the connection became available to the property.
- (B) All buildings hereafter constructed within the city on property adjacent to a sewer main, or in a block through or to which the system extends, shall be connected to the city sanitary sewer system for the disposal of all human waste.

(2001 Code, § 700.02)

§ 50.03 SOUTH END SANITARY SEWER SYSTEM.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SOUTH END SANITARY SEWER SYSTEM. The part of the sanitary sewer system in the city that was financed through the 1965 South End Sanitary Sewer Bond.

(B) *General rule.* No building or any piece or parcel of property will be connected to the South End Sanitary Sewer System, unless a permit is obtained and a connection charge is paid pursuant to §§ 32.15 through 32.20. Connection charges are established by City Council resolution.

(2001 Code, § 700.03)

§ 50.04 WATER CONNECTIONS.

(A) *General rule.* No lot, parcel, piece or tract of property that has not been assessed for a water main or lateral, will have a connection to a public water main or lateral unless a permit is obtained and a connection charge is paid pursuant to §§ 32.15 through 32.20. Connection charges are established by City Council resolution.

(B) *Connection charges.* This connection charge required in division (A) above will be in addition to the tap charge paid to the Board of Water Commissioners of the city.

(C) *Owner's responsibility.* The property owner is responsible for all charges for water service and sewer service for the benefitted property.

(D) *Assessments for unpaid charges.* As of September 1 of each year, the City Board of Water Commissioners may assess all unpaid charges as a special assessment, pursuant to statute, to the County Auditor for collection together with current taxes payable in the following year. Charges so collected shall be remitted to the City Finance Director in the same manner as assessments for local improvements, and then remitted to the City Board of Water Commissioners.

(2001 Code, § 700.05)

§ 50.05 CERTAIN USES PROHIBITED.

The following substances shall not be discharged into any public sanitary sewer:

(A) Steam exhaust or blow off;

(B) Waste containing naphtha, gasoline or other inflammable liquids;

(C) Refuse from butcher shops, rendering establishments, packing houses and other industrial establishments. Some form of catch basin or grated shop basin must catch the refuse; nor

(D) Refuse, solid or liquid, of any character, quality or nature that will unreasonably interfere with the ordinary treatment processes of any sewage treatment plant used by the city.

(2001 Code, § 700.07)

§ 50.06 OBSTRUCTION PROHIBITED.

No refuse or solids of any sort obstructive to the flow of wastewater may be placed, thrown or allowed to enter any public sewer, or allowed to remain on or in any trap or catch basin so as to obstruct the sewer. No person may injure, break or remove any portion of any catch basin, covering flag, gully grating, flush tank or manhole, or any part of any sewer, or do any act obstructing or in any way interfering with the use of any sewer or the flow of waste water through any sewer.

(2001 Code, § 700.09)

§ 50.07 INDUSTRIAL USE SEWER STRENGTH CHARGES.

(A) *Recitals.* The Metropolitan Waste Control Commission, a metropolitan commission organized and existing under the laws of the state (the "Commission"), in order to receive and retain grants in compliance with the Federal Water Pollution Control Act Amendments of 1972 (the "Act"), being 33 U.S.C. §§ 1251 et seq., and regulations under it, has determined to impose an industrial user sewer strength charge upon users of the Metropolitan Disposal System (as defined in Minn. Stat. § 473.121(24), as it may be amended from time to time) to recover operation and maintenance costs of treatment works attributable to the strength of the discharge of industrial waste, in addition to the charge based upon the volume of discharge. In order for the city to pay the costs based upon strength of industrial discharge and allocated to it each year by the Commission, it is necessary to establish sewer strength charges and a formula for the computation for all industrial users receiving waste treatment services within or served by the city. Furthermore, Minn. Stat. § 444.075(3), as it may be amended from time to time, empowers the city to make the sewer charge a charge against the owner, lessee, occupant or all of them and certify unpaid charges to the County Auditor as a tax lien against the property served.

(B) *Establishment of strength charges.* For the purpose of paying the costs allocated to the city each year by the Commission that are based upon the strength of discharge of all industrial users receiving waste treatment services within or served by the city, there is in addition to the sewer charge based upon the volume of discharge, a sewer charge for each person, company or corporation receiving waste treatment services within or served by the city, based upon strength of industrial waste discharged into the sewer system of the city (the "strength charge").

(C) *Establishment of strength charge formula.* For the purpose of computing the strength charge stated in division (B) above, the strength charge formula designated in Res. 76-172 adopted by the governing body of the Commission on June 15, 1976, is adopted by reference. The formula is based upon pollution qualities and difficulty of disposal of the sewage produced through an evaluation of pollution qualities and quantities in excess of an annual average base and the proportionate costs of operation and maintenance of waste treatment services provided by the Commission.

(D) *Strength charge payment.* The strength charge established by division (B) above must be paid by each industrial user receiving waste treatment services before the twentieth day succeeding the date of billing to the user by or on behalf of the city, and the payment will be deemed to be delinquent if not paid by the date due. Furthermore, if the payment is not paid before the date due, an industrial user shall pay interest compounded monthly at the rate of two-thirds of 1% per month on the unpaid balance due.

(E) *Establishment of tax lien.* As provided by Minn. Stat. § 444.075(3), as it may be amended from time to time, if payment of the strength charge in division (B) above is not paid before the sixtieth day succeeding the date of billing to the industrial user by or on behalf of the city, the delinquent sewer strength charge, plus accrued interest established pursuant to division (D) above, will be deemed to be a charge against the owner, and the city or its agent will certify the unpaid delinquent balance to the County Auditor with taxes against the property served for collection as other taxes are collected.

(2001 Code, § 700.11)

§ 50.08 DISCHARGE OF PROHIBITED CLEAR WATER DRAINAGE; SUMP PUMPS.

(A) *Definition.* **CLEAR WATER DRAINAGE**, for the purpose of this section, is defined as stormwater, natural precipitation, ground water or flow from roof runoff, surface runoff, subsurface drainage, down spouts, eave troughs, rainspouts, yard drains, sump pumps, foundation drains, yard fountains, ponds, cistern overflows or water discharged from any nonresidential air conditioning unit or system.

(B) *Ownership.* The property owner shall own and be responsible for the maintenance of the sanitary sewer service lateral between the city's sanitary sewer main within the street and the building being served, including the connection to the main.

(C) *Prohibited discharges.* No person shall directly or indirectly discharge or permit to be discharged any clear water drainage into the city's sanitary sewer system.

(D) *Prohibited connections.* No person shall make or maintain a connection between any conductor used to carry clear water drainage and the city's sanitary sewer system.

(E) *Sump pumps.* Dwellings and other buildings and structures that require a sump pump system to discharge excess water because of the infiltration of water into basements, crawl spaces and the like shall obtain a permit and have a permanently installed discharge line that complies with the following:

(1) It shall not any time discharge water into the city's sanitary sewer system;

(2) It shall provide for year-round discharge capability to either the outside of the dwelling, building or structure, to the city's storm sewer system;

(3) It shall consist of a rigid discharge line inside the dwelling or building, without any connections for altering the path of discharge, and if connected to the city's storm sewer line must include a check valve; and

(4) Must be directed toward the front or rear yard so as not to trespass or discharge on to adjoining properties.

(F) *Inspections.* The city shall conduct inspections of single-family owner-occupied properties to ensure compliance with this section. Failure to have an inspection as required in this section is a violation of the city code.

(1) Except as set forth in division (F)(3), inspections are required when the following occurs:

(a) The property is offered for sale or conveyance by deed or contract for deed, unless the certificate of compliance is still valid pursuant to division (G); and

(b) The city orders a street reconstruction project and the property is adjacent to a street in the project area.

(2) Inspections shall be conducted pursuant to § 10.17. In addition to the inspection requirements in § 10.17, owners shall be required to comply with the following:

(a) Provide sufficient access to the sanitary sewer service lateral within the dwelling, building or other structure, including removal of any obstacles so that the sanitary sewer service lateral is completely accessible to the inspector; and

(b) Clear the sanitary sewer service lateral of any root intrusions or any other intrusions to allow clear televising of the sanitary sewer service lateral from the dwelling, building or other structure to its connection with the city's sanitary sewer main.

(3) Inspections shall not be required under the following circumstances:

(a) It is a newly constructed dwelling and title to the property is transferred to the first owner;

(b) It is the sale or other transfer of title of any property with a dwelling that is being conveyed to a public body;

(c) It is the sale or transfer of title of any property that contains a dwelling that will be demolished; and

(d) It is the sale or conveyance of any property that contains a dwelling by a sheriff or other public or court officer in the performance of their official duties. This exception does not apply to the sale by a person appointed by a probate court.

(4) The city shall complete its inspection reports within ten business days from the date of the inspection and immediately send the report to the property owner. The reports shall indicate all deficiencies discovered in sufficient detail to identify the obstructions and the specific section(s) of the sanitary sewer service lateral that must be repaired.

(G) *Certificates of compliance.* If a property is in compliance with this section, the city shall issue a certificate of compliance. No new inspections or certificates for single-family owner occupied properties shall be required until one of the events in division (F)(1) occurs. Certificates of compliance for single-family residential properties are valid for a period of ten years. Certificates of compliance for residential rental properties and commercial, industrial and HOA properties (as defined below) are valid for a period of ten years.

(H) *Residential rental properties.* For residential rental properties, the property owner is required to obtain an independent inspection and submit an inspection report to the city upon submission of a new or renewal rental license application. The inspection report shall indicate that the property is free from prohibited discharges and prohibited connections, including illegal sump pumps. If there are any violations discovered, the property owner shall have 24 months from the date of adoption of this ordinance to correct any deficiencies and provide a corrected inspection report. The city shall conduct a reinspection of all service lines connecting to the sewer main to verify compliance. Upon verification, the city shall issue a certificate of compliance.

(I) *Commercial, industrial and HOA properties.* For commercial and industrial properties and condominium or townhome residential properties with a homeowner's association ("HOA properties"), property owners are required to obtain an independent inspection and submit an inspection report to the city. The inspection report shall indicate that the property is free from prohibited discharges and prohibited connections, including illegal sump pumps. If there are any violations discovered, the property owner shall have 24 months from the date of adoption of this section to correct any deficiencies and provide a corrected inspection report, unless a different correction date is required by the city. The city shall conduct a reinspection of all service lines connecting to the sewer main to verify compliance. Upon verification, the city shall issue a certificate of compliance.

(J) *Violations.*

(1) *Violations discovered at time of sale.*

(a) *Seller responsibilities.* When the inspector determines that there has been a violation of any provision of this section prior to the sale, the seller is responsible for correcting the violations, unless the buyer has assumed such responsibility as provided in division (b). below. Failure of a seller to disclose to a buyer that there are uncorrected violations of this section is a violation of the city code. When correcting the violations, all necessary permits shall be obtained from the city. Upon completion of the corrections, the city shall reinspect the property to verify compliance.

(b) *Buyer responsibilities.* If a seller cannot correct the violations prior to the sale the buyer must assume the responsibility for correcting the violations. The buyer shall sign a written acknowledgement from the city that includes:

1. The buyer's acceptance and assumption of responsibility for correcting the violations within one year after closing on the property;
2. That the buyer understands that a reinspection is required to verify the corrections have been completed;
3. That the buyer holds the city harmless from liabilities and claims if the buyer occupies the dwelling prior to corrections of the violations.
4. That failure to correct violations or deficiencies is a violation of the city code and subjects the buyer to penalties as stated in divisions (K), (M), and (N).

(2) *Violations and corrections under the roadway.* When the inspector determines that there has been a violation of any provision of this section and the violations are under the roadway, the property owner will perform the repairs, except as stated in division (3) below. However, a property owner shall not excavate in the roadway without permission from the City Engineer.

(3) *Non-excavation violations and corrections within two feet from the main.* When the property owner is correcting violations of the sanitary sewer service lateral between the street and the building and the corrections only involve lining of the sanitary sewer service lateral, the owner shall stop all repairs at a distance of two feet from the city's sanitary sewer main. The city shall assume responsibility for any lining within two feet from the main, which will be done in conjunction with scheduled street repair work.

(K) *Penalty.*

(1) A monthly penalty of \$50 for owner-occupied single-family properties not on Robert Street; a monthly penalty of \$500 for owner-occupied single-family properties on Robert Street; a monthly penalty of \$300 for residential rental, commercial, industrial and HOA properties not on Robert Street; and a monthly penalty of \$1,000 for residential rental, commercial, industrial and HOA on Robert Street shall be added to each sewer and water bill if:

- (a) An owner fails to complete an inspection pursuant to division (F), (H) and (I);
- (b) An owner whose property was found in violation of this section did not make the necessary changes and furnish proof of those changes to the city within the time frames required by this section;
- (c) An owner fails to allow an inspection or reinspection to verify compliance; or
- (d) There has been a reconnection of a previously disconnected prohibited discharge. If a property is certified in compliance with this section and the same owner is later found to have reconnected to the city's sanitary sewer system, the property owner will be subject to the surcharge for all months between the last two inspections.

(2) The penalty shall be added for every month during which the property is not in compliance.

(L) *Temporary waiver.* The City Engineer may allow or require a temporary waiver from the provisions of this section when strict enforcement would cause a threat of damage to other property, the environment or public safety because of circumstances unique to the individual property. A written request for a temporary waiver must be first submitted to the City Engineer specifying the reasons for the request.

(M) *City Engineer.* The City Engineer may terminate the waiver upon a failure to comply with any conditions imposed in the temporary waiver or may take appropriate legal action to enforce those conditions. After expiration or termination of a temporary waiver, the property owner must comply with the provisions of this section.

(N) *Public nuisance.* An owner or occupant who fails to have an inspection, who has done work that does not comply with this section, who reconnects to a previously disconnected prohibited discharge, who fails to pay the penalty or who has failed to do the work required by this section within the specified time limit, will be deemed to have created a public nuisance subject to abatement and assessment, as provided in Chapter 94.

(O) *Remedies*. The remedies provided in this section do not limit the right of the city to pursue any other available legal remedy.

(2001 Code, § 700.20) (Ord. 16-06, passed 6-13-2016)

§ 50.09 STORMWATER ILLICIT DISCHARGE AND ILLICIT CONNECTION.

(A) *Purpose*. The purpose of this section is to provide for the health, safety and general welfare of the citizens of the city through the regulation of non-stormwater discharges to the storm drain system to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the storm drain system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process. The objectives of this section are:

- (1) To regulate the contribution of pollutants to the storm drain system by stormwater discharges by any user;
- (2) To prohibit illicit connections and discharges to the storm drain system; and
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this section.

(B) *Findings*. The City Council hereby finds that non-stormwater discharges to the city's municipal separated storm sewer system are subject to higher levels of pollutants that enter into receiving water bodies adversely affecting the public health, safety and general welfare by impacting water quality, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood control and other community services.

(C) *Definitions*. For the purpose of this section, the following terms, phrases, words and their derivatives shall have the meaning stated below.

BEST MANAGEMENT PRACTICE or **BMP**. Defined at § 153.471.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY. An activity subject to the NPDES general stormwater permit for construction activity. This includes 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.

DISCHARGE. Adding, introducing, releasing, leaking, spilling, casting, throwing or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state.

EROSION. Defined at § 153.471.

GROUNDWATER. Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground.

HAZARDOUS MATERIAL. 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. Defined as either of the following:

(a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system (including any non-stormwater discharge) including sewage, process wastewater and wash water and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted or approved by the city; or

(b) Any drain or conveyance connected from a residential, commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by the city.

ILLICIT DISCHARGE. Any direct or indirect non-stormwater discharge to the storm sewer system, except as exempted in division (G) below.

INDUSTRIAL ACTIVITY. An activity subject to NPDES general stormwater permit for industrial activity as defined in 40 C.F.R. § 122.26(b)(14).

MPCA. The Minnesota Pollution Control Agency.

MUNICIPAL SEPARATE STORM SEWER SYSTEM or **MS4.** The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

NPDES. The National Pollutant Discharge Elimination System, which is the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (§§ 301, 318, 402 and 405) and 33 C.F.R. parts 1317, 1328, 1342 and 1345 authorizing the discharge of pollutants to water of the United States.

NPDES STORMWATER DISCHARGE PERMIT. A permit issued by the MPCA that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable on an individual, group or general area-wide basis.

NON-STORMWATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of stormwater.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT.

(a) Any substance which, when discharged has potential to or does any of the following:

1. Interferes with state designated water uses;
2. Obstructs or causes damage to waters of the state;
3. Changes water color, odor or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;
4. Adds an unnatural surface film on the water;
5. Adversely changes other chemical, biological, thermal or physical condition, in any surface water or stream channel;
6. Degrades the quality of groundwater; or
7. Harms human life, aquatic life or terrestrial plant and wildlife.

(b) **POLLUTANT** includes but is not limited to dredged soil, solid waste, incinerator residue, garbage, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance and oxygen-demanding material.

POLLUTE. To discharge pollutants into waters of the state.

POLLUTION. The direct or indirect distribution of pollutants into waters of the state.

PREMISES. Any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking areas.

STATE DESIGNATED WATER USES. Uses specified in state water quality standards.

STORM DRAIN SYSTEM. Publicly-owned facilities by which stormwater is collected 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 SEWER SYSTEM. A conveyance or system of conveyances that is owned and operated by the city or other entity and designed or used for collecting or conveying stormwater.

STORMWATER. Defined at § 153.471.

SURFACE WATERS. All waters of the state other than ground waters, which include ponds, lakes, rivers, streams, tidal and non-tidal wetlands, public ditches, tax ditches and public drainage systems except those designed and used to collect, convey or dispose of sanitary sewage.

WASTEWATER. Any water or other liquid, other than uncontaminated stormwater, discharged from a premise.

WATERS OF THE STATE. Defined at § 153.471.

(D) *Administration.* The city and its authorized representatives are authorized to administer, implement and enforce the provisions of this section.

(E) *Applicability.* This section shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless explicitly exempted by the city. The city shall administer, implement and enforce the provisions of this section.

(F) *Compatibility with other regulations.* This section is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, then whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(G) *Discharge prohibitions and exceptions.*

(1) No person shall throw, drain or otherwise discharge, cause or allow anyone under his or her control to throw, drain or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited, except as described as follows:

(a) Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated ground water infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges and street wash water;

(b) Discharges or flow from firefighting activities and other discharges authorized by the city as being necessary to protect public health and safety;

(c) Discharges associated with dye testing; however this activity requires a verbal notification to the Public Works Department prior to the time of the test;

(d) Any non-stormwater discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(2) No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, left or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system or water of the state, any refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles and accumulations, so that the same may cause or contribute to pollution. Waste deposited in streets in proper receptacles for the purposes of collection is exempted from this prohibition.

(3) No person shall throw, deposit, place, leave, maintain or keep any substance upon any street, alley, sidewalk, storm drain, inlet, catch basin conduit or drainage structure, business place or upon any public or private land, so that the same might be or become a pollutant, unless the substance is in containers, recycling bags or any other lawfully established waste disposal device.

(H) *Illicit connection prohibitions.*

(1) No person shall use any illicit connection to intentionally convey non-stormwater to the city's storm sewer system.

(2) The construction, use, maintenance or continued existence of illicit connections to the storm sewer system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this section if the person connects a line conveying sewage to the storm sewer system, or allows such a connection to continue.

(4) If a drain or conveyance on a property has not been documented in any plans or maps or equivalent documentation filed with the city which may be connected to the storm drain system, the city may require the owner or occupant of the property to locate the drain or conveyance to make certain that it is not an illicit connection to the storm drain system. The city shall provide the owner or occupant with a written notice requiring that the locating be completed within a reasonable time period. The owner or occupant shall perform the locating and shall provide the city with documentation that the drain or conveyance is not an illicit connection.

(I) *Industrial or construction activity discharges.* Any person performing any construction or industrial activity subject to an NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with the permit may be required in a form acceptable to the Public Works Department prior to the allowing of discharge to the storm drain system.

(J) *Requirement to prevent, control and reduce stormwater pollutants by the use of BMPs.* BMPs are required for any activity, operation or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system or waters of the state. The owner or operator of such activity, operation or facility shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drain system or waters of the state through the use of structural and non-structural BMPs. The owner or operator of a premise that may be the source of an illegal discharge may be required by the city to implement, at the discharger's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drain system. These BMPs shall be part of the Stormwater Pollution Prevention Plan if necessary for compliance with requirements of an NPDES permit. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(K) *General provisions.* All owners or occupants of property shall comply with the following general requirements.

(1) No person shall leave, deposit, discharge, dump or otherwise expose any chemical or septic waste in an area where discharge to streets or storm sewer system may occur. This section shall apply to both actual and potential discharges.

(a) Individual septic systems must be maintained to prevent failure, which has the potential to pollute surface water.

(b) No part of any individual septic system requiring on-land or in-ground disposal of waste shall be located closer than 150 feet from the ordinary high water level in the case of DNR protected waters, or the wetland boundary in the case of all other water bodies, unless it is proven by the applicant that no effluent will immediately or gradually reach the water bodies because of existing physical characteristics of the site or the system.

(c) Recreational vehicle sewage shall be disposed to a proper sanitary waste facility. Waste shall not be discharged in an area where drainage to streets or storm sewer systems may occur.

(d) For pools, water must be allowed to sit seven days without the addition of chlorine to allow for chlorine to evaporate before discharging in an area where drainage to streets or storm sewer systems may occur.

(2) Runoff of water from residential property shall be minimized to the maximum extent practicable. Runoff of water from the washing down of paved areas in commercial or industrial property is prohibited unless necessary for health or safety purposes and not in violation of any other provisions of the city code or zoning ordinances.

(3) Mobile washing companies (carpet cleaning, mobile vehicle washing, etc.) shall dispose of wastewater to the sanitary sewer. Wastewater must not be discharged where drainage to streets or storm sewer system may occur.

(4) Storage of materials, machinery and equipment must comply with the following requirements.

(a) Objects, such as motor vehicle parts containing grease, oil or other hazardous substances and unsealed receptacles containing hazardous materials shall not be stored in areas susceptible to runoff.

(b) Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain leaks, spills or discharges.

(5) Debris and residue shall be removed as follows.

(a) All motor vehicle parking lots and private streets shall be swept at least once a year in the spring to remove debris. Such debris shall be collected and properly disposed.

(b) Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries shall be removed as soon as possible and disposed of properly. Household hazardous waste may be disposed of through the county collection program or at any other appropriate disposal site and shall not be placed in a trash container.

(L) *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 the storm sewer system, or water of the state 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 within 24 hours of the discharge. 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 reoccurrence. Such records must be retained for at least five years past the end of the NPDES industrial permit cycle. Failure to provide notification of a release as provided in this section is a violation of this section.

(M) *Access to building for inspection, monitoring and/or dye testing.*

(1) The city shall be permitted to enter and inspect all buildings under this section as often as may be necessary to determine compliance with this section provided the city gives 24 hours' advanced notice. However, in cases of emergency, the city shall be given immediate access.

(2) Facility operators shall allow the city ready access to all part of the premises for the purposes of inspection, sampling, dye testing, examination and copying of records that relate to the discharge of stormwater. Any temporary or permanent obstruction to safe and easy access to the area to be inspected or sampled shall be promptly removed by the discharger at the request of the Public Works Department and shall not be replaced.

(3) The city shall have the right to establish, at any building, such devices as are necessary to conduct monitoring, sampling and/or dye testing of the facility's stormwater discharge.

(4) The city has the right to require the discharger to install monitoring equipment as necessary. The monitoring equipment must be maintained by the discharger in a safe and proper operating condition at all times. All devices used to measure stormwater flow and quality must be calibrated in order to ensure their accuracy.

(5) Unreasonable delays in allowing the city access to a facility is a violation of this section.

(6) If the city has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this section, 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 section 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 an administrative search warrant from any court of competent jurisdiction.

(N) *Suspension of storm sewer system access.*

(1) *Suspension due to illicit discharges in emergency situation.* The city may, without prior notice, suspend storm sewer system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm sewer or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the storm sewer system or waters of the state, or to minimize danger to persons.

(2) *Suspension due to the detection of illicit discharge.* All persons discharging to the storm sewer system in violation of this section may have their storm sewer system access terminated if such termination serves to abate or reduce an illicit discharge. It is a violation of this section to reinstate storm sewer system access to premises that have been terminated pursuant to this section without the prior approval of the city.

(O) *Enforcement.*

(1) *Notice of violation.* A violation of this section is a public nuisance. When the city finds that a person has violated a prohibition or failed to meet a requirement of this section, the person is deemed to have created a public nuisance subject to abatement and assessment, as provided in City Code Chapter 94. The city may also issue an administrative citation pursuant to City Code § 10.98. In addition to any order issued to abate the public nuisance pursuant to City Code Chapter 94, the city may require the following:

- (a) The performance of monitoring, analysis and reporting;
- (b) The implementation of source control or treatment BMPs; and
- (c) Any other requirement deemed necessary or appropriate.

CHAPTER 51: LAWN SPRINKLING BAN

51.01 Mayor's authority to ban

51.02 Exceptions

51.03 Effective date

§ 51.01 MAYOR'S AUTHORITY TO BAN.

(A) The Mayor is authorized to ban the watering of lawns by emergency proclamation.

(B) The proclamation may specify a particular portion of the city or specific hours of the day.

(C) The proclamation will be effective until the next regular City Council meeting when the ban may be extended or rescinded by the City Council.

(D) Unless otherwise specified in the proclamation, no person may water a lawn from a public water supply during such a ban.

(2001 Code, § 715.01)

§ 51.02 EXCEPTIONS.

An emergency ban by proclamation does not restrict watering of young trees, shrubs, flower and vegetable gardens or new sod.

(2001 Code, § 715.03)

§ 51.03 EFFECTIVE DATE.

An emergency ban is effective upon publication in the city's legal newspaper.

(2001 Code, § 715.05)

CHAPTER 52: STORMWATER DRAINAGE UTILITY

Section

52.01 Establishment

52.02 Purpose of funds derived and allocation of revenue

52.03 Storm sewer utility fee

52.04 Exemptions

52.05 Recalculation of fees

52.06 Collections and assessments

§ 52.01 ESTABLISHMENT.

A stormwater drainage utility for the city is hereby established. The municipal storm sewer system shall be operated as a public utility pursuant to Minn. Stat. § 444.075, as it may be amended from time to time, from which revenues will be derived, subject to the provisions of this section, and state statutes. The stormwater drainage utility will be a part of the city's Public Works Department and under the administration of the Public Works Director.

(2001 Code, § 730.01)

§ 52.02 PURPOSE OF FUNDS DERIVED AND ALLOCATION OF REVENUE.

The purpose of all funds derived from the stormwater drainage utility is to pay for all or part of the construction, reconstruction, repair, enlargement, improvement, maintenance, operation and use of the storm sewer utility, and complying with permits required by law, as established by the city. All revenues derived from the stormwater drainage utility fees shall be credited to the appropriate storm sewer fund.

(2001 Code, § 730.03)

§ 52.03 STORM SEWER UTILITY FEE.

(A) *Connection fee.* A storm sewer utility fee for the connection and availability of the storm sewer facilities shall be determined by City Council resolution, as adjusted from time to time, and shall be just and equitable. A charge for the connection and availability of storm sewer service may be imposed for all premises abutting on streets or other places where municipal storm sewers are located, whether or not connected to them.

(B) *Use fee.* The storm sewer utility fee for use of the storm sewer facilities shall be determined by City Council resolution, as adjusted from time to time, and shall be just and equitable. Charges made for the use of the facilities may be fixed by reference to the square footage of the property charged, adjusted for a reasonable calculation of the stormwater runoff, or by reference to a reasonable classification of the types of premises to which the service is furnished, or by reference to the quantity, pollution qualities, and difficulty of disposal of stormwater runoff produced, or fixed by any other equitable basis, including, but without limitation, any combination of those aforementioned factors.

(C) *Adjustments.* The City Council may, by resolution, adopt policies and standards for the adjustment of the fees for parcels. Those adjustments shall not be made retroactively.

(2001 Code, § 730.05)

§ 52.04 EXEMPTIONS.

(A) Public rights-of-way are exempt from the fees established in § 52.03.

(B) Vacant, unimproved land with ground cover and city-owned land are exempt from the fees established in § 52.03.

(2001 Code, § 730.07)

§ 52.05 RECALCULATION OF FEES.

If a person responsible for paying the fees established in § 52.03 questions the correctness of those fees, that person may have the determination of the fees recalculated within 30 days of the mailing of the fees by submitting a written request to the Public Works Director.

(2001 Code, § 730.11)

§ 52.06 COLLECTIONS AND ASSESSMENTS.

(A) Payment of all fees are due on the due date specified by the city and shall be delinquent 15 days thereafter if not paid. The city shall endeavor to promptly collect delinquent accounts, and, in all cases where satisfactory arrangements for payments have not been made, all the delinquent accounts shall be certified by the City Clerk, who shall prepare an assessment of the delinquent accounts against the property served or to be served. The city may add certification charges in the amount provided for in a City Council resolution, as adjusted from time to time, to each delinquent account.

(B) The City Clerk shall deliver this assessment roll to the City Council for adoption prior to the final date for certification to the County Auditor for collection, together with property taxes payable in the following year. The assessment action is optional and may be taken in addition to any other legal action to collect delinquent accounts.

TITLE VII: TRAFFIC CODE

Chapter

- 70. GENERAL PROVISIONS
- 71. TRAFFIC REGULATIONS
- 72. PARKING REGULATIONS
- 73. SNOWMOBILES
- 74. PARKING SCHEDULES

CHAPTER 70: GENERAL PROVISIONS

Section

70.01 Highway traffic regulation; private streets and roads

§ 70.01 HIGHWAY TRAFFIC REGULATION; PRIVATE STREETS AND ROADS.

- (A) *Traffic Regulations Act adopted by reference.* Minn. Stat. Chapter 169, as it may be amended from time to time, "Traffic Regulations," is adopted by reference.
- (B) *Definitions.* For purposes of this section, the terms defined in Minn. Stat. § 169.011, as it may be amended from time to time, have the meanings given by that section.
- (C) *Application to private streets and roads.* This section applies to private streets, roads and parking lots freely used by the general public.

(2001 Code, § 1300)

CHAPTER 71: TRAFFIC REGULATIONS

Section

- 71.01 Turning
- 71.02 U-turns
- 71.03 Limited travel on posted streets
- 71.04 Truck restrictions
- 71.05 Through streets; one-way streets; stop and yield intersection

§ 71.01 TURNING.

- (A) The City Council may, by resolution, designate any intersection as one where the turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours whenever necessary to preserve a free flow of traffic or to prevent accidents.
- (B) The Public Works Director will mark by appropriate signs any intersection so designated.

(C) No intersection on a trunk highway may be so designated until the Commissioner of Highways consents to such a designation.

(D) No person may turn a vehicle at any such intersection contrary to the directions on the signs.

(2001 Code, § 1305.01)

§ 71.02 U-TURNS.

No vehicle may be turned so as to proceed in the opposite direction in the following circumstances:

(A) Upon any curve;

(B) Upon the approach to or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 1,000 feet;

(C) If the movement cannot be made safely and without interfering with other traffic; or

(D) In the congested district established pursuant to § 72.03.

(2001 Code, § 1305.03)

§ 71.03 LIMITED TRAVEL ON POSTED STREETS.

It is unlawful for the driver of a motor vehicle to travel through or past a barricade or sign forbidding passage along any street, alley or parking lot in the city.

(2001 Code, § 1305.05)

§ 71.04 TRUCK RESTRICTIONS.

(A) *Weight restrictions.* No vehicle or combination of vehicles may be upon the municipal streets or highways of the city when the gross weight on any single wheel exceeds 9,000 pounds, or when the gross weight on any single axle exceeds 18,000 pounds. During the period between March 15 and May 1 of each year, or any other period designated by the City Council, no vehicle or combination of vehicles may be operated upon municipal streets or highways in the city when the gross weight on any single axle exceeds 8,000 pounds, unless the street or highway is otherwise posted by an appropriate sign indicating a higher weight limit.

(B) *Additional restrictions.* In addition to the restrictions in division (A) above, the Public Works Director is authorized and directed to prohibit the operation of vehicles or loads upon any city street or highway or to impose further weight restrictions as to the weight of loads that may be placed on the streets or highways whenever the street or highway by reason of deterioration, rain, snow or other condition will be seriously damaged or destroyed, unless the use is prohibited or the permissible weights above are reduced. In those cases of further restrictions or prohibitions, signs will be erected plainly indicating the prohibitions or restrictions at each end of that portion of any street affected.

(C) *Parking trucks over 12,000 pounds g.v.w. or trucks transporting hazardous substances.*

(1) No truck or commercial vehicle with a capacity over 12,000 pounds gross vehicle weight ("g.v.w."), and no truck used to transport gasoline, fuel oil, or hazardous substance may be parked on any street or alley in the city for a period longer than 90 minutes or the time necessary to load or unload the truck if the truck is in the process of making a delivery.

(2) No truck or commercial vehicle of any type over 12,000 pounds g.v.w., and no truck used to transport gasoline, fuel oil, or hazardous substances may be parked or stored on residential private property in the city for a period longer than 90 minutes, unless permission to do so is granted by permit from the Council, which must be renewed annually after its issue.

(a) *Special permit.* The City Engineer, upon application and for good cause, may issue a special permit exceeding the maximum weight specified in this section.

(b) The application for a permit must fully describe the vehicle or loads to be moved and the streets for which a permit is requested.

- (c) An applicant may appeal any decision of the City Engineer to the City Council by filing a written notice of appeal with the City Clerk within 15 days of the City Engineer's decision.
- (d) The City Engineer or the City Council may require an applicant to post the security as may be deemed necessary to protect the city and compensate for any damage to the roadway.
- (e) Every permit must be carried in the vehicle or attached to the load and must be produced for inspection upon request of any police officer or city employee.
- (2001 Code, § 1305.07)

§ 71.05 THROUGH STREETS; ONE-WAY STREETS; STOP AND YIELD INTERSECTION.

The City Council may, by resolution, designate stop and yield intersections and any street or portion of street as a through highway or a one-way roadway where necessary to preserve the free flow of traffic or to prevent accidents. The Public Works Director will post appropriate signs at the entrance to those intersections and streets. No trunk highway will be so designated unless the Commissioner of Highways consents to such a designation.

(2001 Code, § 1305.09)

CHAPTER 72: PARKING REGULATIONS

Section

- 72.01 Snow emergency routes
- 72.02 Parking over 48 hours
- 72.03 Parking restrictions; congested district
- 72.04 Street repair and maintenance
- 72.05 General parking restrictions
- 72.06 Locking parked vehicle
- 72.07 Repairing of vehicles on street
- 72.08 Displaying vehicle for sale
- 72.09 Glass and other injurious substance on streets
- 72.10 Authority to remove

§ 72.01 SNOW EMERGENCY ROUTES.

See Chapter 74, Schedule I.

§ 72.02 PARKING OVER 48 HOURS.

No vehicle shall be parked continuously upon any street or alley at a place not contiguous or adjacent to the residence of its owner for more than 48 hours.

(2001 Code, § 1310.02) (Ord. 03-06, passed - -)

§ 72.03 PARKING RESTRICTIONS; CONGESTED DISTRICT.

(A) *District designated.* The congested district of the city includes the following streets:

- (1) South Robert Street between Annapolis and Haskell; and
- (2) Smith Avenue between Annapolis and Mina.

(B) *Congested district; no truck parking.*

(1) The City Council may, by resolution, establish "No Truck Parking" zones in the congested district, and will mark by appropriate signs any zone so established. "No Truck Parking" zones may be established in the congested district where heavy traffic by commercial vehicles or other traffic congestion makes parking by commercial vehicles a hazard to the safety of vehicles or pedestrians.

(2) No person may park a commercial vehicle of more than one-ton capacity between 8:00 a.m. and 6:00 p.m. on any week day upon any street in a "no truck parking" zone, but parking of those vehicles for a period of not more than 30 minutes will be permitted in the zone for the purpose of having access to abutting property when access cannot conveniently be secured from an alley or side street where truck parking is not so restricted.

(C) *Congested district; loading zones.*

(1) The City Council may, by resolution, establish in each block in the congested district one or more loading zones, and will mark by appropriate signs any zone so established.

(2) The zones may be located at places most convenient for the use of the public and with regard to traffic conditions in the block.

(3) No person may park any vehicle in any loading zone between 8:00 a.m. and 6:00 p.m. of any weekday, except for the purpose of receiving or discharging passengers or freight and then only for a period no longer than is necessary for the discharge or receipt of the passengers or freight.

(2001 Code, § 1310.03)

§ 72.04 STREET REPAIR AND MAINTENANCE.

(A) No vehicle may be parked or left unattended in a street or alley designated for street repair or maintenance by posted sign.

(B) The street will be posted for street repair or maintenance at least 24 hours prior to unattended vehicles being towed or removed by the city.

(C) Unless further restricted by posted sign, parking may be resumed on such streets immediately after the signs have been removed.

(2001 Code, § 1310.05)

§ 72.05 GENERAL PARKING RESTRICTIONS.

(A) *No parking, stopping, standing, bus stop zones.*

(1) The City Council may, by resolution, designate certain streets or portions of streets as "no parking", "no stopping", "no standing" or "bus stop" zones and may limit the hours in which the restrictions apply.

(2) Except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device, no person may stop or park a vehicle in an established no stopping, standing or bus stop zone.

(3) No vehicle may be parked in a no-parking zone during hours when parking is prohibited. No vehicle, except a bus, may be parked or standing in a bus stop zone.

(B) *Time limit parking zones.* The Council may, by resolution, designate certain areas where the right to park is limited during specified hours. No person may park a vehicle in any limited parking zone for a longer period than so specified on a posted sign.

(C) *Permit parking zones.* No person may park a vehicle in a permit parking zone without first obtaining and displaying the proper

permit.

(1) In order to establish a permit parking zone, 70% of the residents and/or businesses who have an address within the proposed permit parking zone must sign and file a written petition with the City Clerk containing the following information:

(a) The specific streets, blocks or area that should be included in the permit parking zone, with a map depicting the proposed permit parking zone;

(b) The hours during which the parking permit should be enforced;

(c) The necessity for the permit parking zone; and

(d) The printed names, addresses and signatures of 70% of the property owners or adult occupants of properties within the proposed permit parking zone. For purposes of calculating 70% only one signature shall be counted per property or per legal address.

(2) *Council consideration.* Upon receipt of a valid petition, the city shall notify all property owners and occupants, if known, within the proposed permit parking zone, as well as those property owners within 350 feet of the proposed permit parking zone of the date and time that the petition will be considered by the Council. After a hearing, the Council may approve, modify or deny the permit parking zone in order to protect the health, safety and welfare of the citizens of the city. If approved, a permit parking zone establishing the boundaries of the zone and hours of enforcement will be adopted by City Council resolution.

(3) *Permanent parking permits.* Upon application to the Police Department, owners and occupants who reside at a property address that is within an approved permit parking zone, may be issued a parking permit. The applicant must identify the vehicles to which the parking permit will be permanently affixed by make, model and license plate number, and pay the appropriate fee. The vehicles must register to the same property address for which the parking permit is being requested. Employees who park work vehicles at their residence may provide proof of residency at that address and proof of employment as sufficient documentation for a permanent parking permit. The parking permits shall be valid as long as the owner or occupant resides at the property that is within the permit parking zone.

(4) *Temporary parking permits.* Owners and occupants who reside at a property address that is in the permit parking zone may apply for a temporary parking permit on behalf of their guests. The applicant must identify the dates for which the temporary parking permit is requested, and pay the appropriate fee. the dates shall be listed on the temporary parking permit, which must be prominently displayed in the vehicle.

(5) The Council may establish appropriate fees by City Council resolution to recover the costs associated with consideration and implementation of a permit parking zone.

(D) *Prima facie violation.* The presence of any motor vehicle on any street when standing or parked in violation of this section is prima facie evidence that the registered owner of the vehicle committed or authorized the commission of the violation.

(E) *Parked or stored motor vehicles.* The outside parking and storage on residentially-zoned property of large numbers of vehicles and vehicles, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it: obstructs views on streets and private property; creates cluttered and otherwise unsightly areas; prevents the full use of residential streets for residential parking; introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited; decreases adjoining landowners' and occupants' enjoyment of their property and neighborhood; and otherwise adversely affects property values and neighborhood patterns.

(1) *Purpose.* The purpose of this section is to preserve and protect residential districts from the intrusion of objects of a size and appearance as to cause interference with sight lines, access to structures by emergency vehicles and personnel, unsightly clutter and to prevent visual obstruction that is inconsistent with the intent of the provisions of the zoning and subdivision ordinances.

(2) *Definitions.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

RECREATIONAL EQUIPMENT or RECREATIONAL VEHICLES. Recreational equipment or recreational vehicles means any of the following:

1. Boats and canoes;
2. All terrain vehicles (ATVs);
3. Snowmobiles;
4. Noncommercial utility trailers and trailers for the transportation of boats, canoes, snowmobiles and ATVs, or other such

similar vehicles;

5. Travel campers or house trailers;
6. Motor homes and motor vehicles designed, constructed or used to provide temporary movable living quarters; or
7. Slip-in camper tops attached or detached from pick-up trucks.

(3) *Number of motor vehicles.* The owner or occupant of premises occupied as single-family residential may not maintain or keep more than four motor vehicles, including recreational vehicles, continuously parked or stored outdoors on public or private property. All parking surfaces for the parking or storage of motor vehicles, including recreational vehicles, must be of concrete-type or asphalt.

(4) *Recreational vehicles.*

(a) No more than one non-oversized (less than 25 feet, as measured from the tongue to the rear) travel camper, house trailer, motor home, motor vehicle designed, constructed or used to provide temporary movable living quarters or slip-in camper top attached or detached from a pick-up truck may be parked or stored on single-family residential property.

(b) No more than one non-oversized (less than 20 feet, as measured from the tongue to the rear) noncommercial utility trailer or trailer for the transportation of boats, canoes, snowmobiles and ATVs or other such similar vehicle may be parked or stored on single-family residential property.

(c) No recreational vehicle shall be permanently affixed to the parking surface in a manner that would prevent its removal.

(d) No recreational vehicle shall be used for living, sleeping or housing purposes, whether on public or private property.

(e) All recreational vehicles shall be in good, operable condition and properly licensed for operation.

(f) All recreational vehicles shall be registered to the property owner or occupant on which the recreational vehicles are stored.

(g) Noncommercial utility trailers that are loaded with a boat, snowmobile, ATV or similar vehicle shall be counted as one recreational vehicle (trailer plus vehicle) for purposes of calculating the total number of vehicles per premises.

(h) A travel camper, house trailer, motor home, motor vehicle designed, constructed or used to provide temporary movable living quarters or slip-in camper top attached or detached from a pick-up truck that is longer than 25 feet in length must obtain a special permit from the City Council to be parked or stored on residential property. No fee shall be required for such permit.

(i) Residents will have until January 1, 2017 to comply with divisions (E)(4)(a), (E)(4)(b) and (E)(4)(h) above. All other provisions shall require compliance upon adoption.

(5) Exterior storage of items other than a boat, snowmobile, ATV or similar item on a noncommercial utility trailer is prohibited.

(6) No camp car, trailer, motor vehicle, tent or other temporary structure may be parked or placed upon any public street or on any public or private premises in the city and used as a shelter or enclosure of persons and their effects for the purpose of living therein.

(Ord. 16-08, passed 6-27-2016; Ord. 16-09, passed 8-8-2016)

§ 72.06 LOCKING PARKED VEHICLE.

(A) No person may leave a motor vehicle, except a commercial motor vehicle, unattended upon any street, alley, used car lot or unattended parking lot, without first stopping the vehicle, turning off the engine, and removing the key from the ignition.

(B) A violation of this section will not mitigate the offense of stealing the motor vehicle, nor may the violation be used to affect a recovery in any civil action for theft of the motor vehicle, or the insurance thereon, or have any other bearing in any civil action.

(C) Whenever any police officer of the city finds any such motor vehicle standing in violation of the foregoing provisions, the police officer may remove the keys.

(2001 Code, § 1310.09)

§ 72.07 REPAIRING OF VEHICLES ON STREET.

No person may make any repairs to any motor vehicle on the streets of the city, except repairs necessitated by an emergency.
(2001 Code, § 1310.11)

§ 72.08 DISPLAYING VEHICLE FOR SALE.

- (A) No person may park a vehicle on any street, other public property or commercially zoned or unsurfaced private property, for the purpose of displaying the vehicle for sale; provided, however, residents may park a single vehicle on that portion of the street immediately adjacent to their home with a "For Sale" sign in a side window, if the vehicle is registered to a person residing at that address.
- (B) Any vehicle parked in violation of this provision shall be subject to § 72.10.
- (2001 Code, § 1310.13)

§ 72.09 GLASS AND OTHER INJURIOUS SUBSTANCE ON STREETS.

- (A) No person may throw or deposit glass, metal, garbage, tin cans or any other similar substance upon any street, and anyone who drops or throws or permits to be dropped or thrown any such destructive or injurious substance must immediately remove it.
- (B) Any wrecked or damaged vehicle or vehicle that is excessively dripping fluids on a street or roadway must be removed without unreasonable delay, and pending removal will be guarded with proper lights in intensity to ordinary parking lights, or by red flares, and when removed, no glass or injurious substance may be left upon the street or roadway by the person removing the vehicle.
- (2001 Code, § 1310.15)

§ 72.10 AUTHORITY TO REMOVE.

Any vehicle that is left unattended or is found in violation of any provision of this chapter or Chapter 74, Schedule I, is declared to be a public nuisance and may be summarily abated pursuant to Chapter 94.

(2001 Code, § 1310.17)

CHAPTER 73: SNOWMOBILES

Section

73.01 Snowmobile regulations

§ 73.01 SNOWMOBILE REGULATIONS.

- (A) *State laws and regulations adopted by reference.*
- (1) *Snowmobile law.* Minn. Stat. §§ 84.81, 84.82, 84.87, 84.871, 84.872, 84.88, 84.89, 84.90 and 97B.091, as they may be amended from time to time, are adopted by reference.
- (2) *Department of Natural Resources Rules.* Minnesota Regulations, Chapter 5, Natural Resources 51-59, the rules of the Commissioner of Natural Resources of the state applying to snowmobiles, are adopted by reference.
- (B) *Additional regulations.*
- (1) *Purpose.* According to the authority granted by Minn. Stat. § 84.87, as it may be amended from time to time, the city enacts the additional regulations contained in this section.

(2) *Operation prohibited.* It is unlawful for any person to drive, operate, control or direct the course of travel of any snowmobile:

- (a) Upon private property without the permission of the owner or person entitled to possession of the property;
- (b) Within 75 feet of any right-of-way.

(3) *Equipment.* In addition to the requirements of the state law, a safety throttle, commonly described as "dead man's throttle," must also be on all snowmobiles and in operating condition at all times when the vehicle is in use. A **DEAD MAN'S THROTTLE** is a device that automatically cuts the fuel supply to the engine whenever the operator releases pressure upon the throttle or accelerator.

(4) *Unattended vehicles.* No snowmobile may be unattended while the motor is running or while the key is in the ignition.

(C) This section does not apply to city-sponsored training and safety demonstrations.

CHAPTER 74: PARKING SCHEDULES

Schedule

I. Snow emergency routes

SCHEDULE I. SNOW EMERGENCY ROUTES.

(A) *Definition.* **SNOWFALL** means a new accumulation of snow of two and one-half inches or more. The National Weather Service will measure snowfall accumulation.

(B) *Declaration of emergency.* Whenever in the opinion of the City Engineer or the Chief of Police an emergency exists in the city, or in a section or sections thereof, because of snow, freezing rain, sleet, ice, snowdrifts or other natural phenomena that create, or are likely to create, hazardous road conditions impeding, or are likely to impede the free movement of fire, health, police, emergency or other vehicular traffic, or the safety and welfare of the community, the City Engineer or the Chief of Police may declare an emergency to exist for a period of 72 hours, but the emergency may be sooner terminated if conditions permit. Notice of the emergency shall be given by press, radio or television, which news media shall be requested to cooperate with the city officials and shall constitute due and proper notice.

(C) *Snow emergency routes designated.* The following streets are snow emergency routes:

- (1) Annapolis Street;
- (2) Bernard Street;
- (3) Butler Avenue;
- (4) Charlton Street;
- (5) Delaware Avenue;
- (6) Dodd Road;
- (7) Emerson Avenue;
- (8) Marie Avenue;
- (9) Mendota Road;
- (10) Moreland Avenue;
- (11) Oakdale Avenue;
- (12) Stryker Avenue;
- (13) South Robert Street;

(14) South Smith Avenue;

(15) Thompson Avenue; and

(16) Wentworth Avenue.

(D) *General rule.* No vehicle may be parked or left unattended after 2:00 a.m. on any street designated as a snow emergency route after any snowfall. Unless further restricted by posted sign, parking may be resumed on streets immediately after they have been plowed of snow.

(E) *Other streets and improved alleys.* No vehicle may be parked or left unattended between 8:00 a.m. and 8:00 p.m. on any other street or improved alley after any snowfall until the street or improved alley has been plowed of snow. After plowing, parking may be resumed, unless further restricted by posted signs.

(F) *Towing.* Any vehicle parked in violation of this section may be towed off the street by the city at the owner's expense.

(G) *Exception.* If any street is not plowed within 48 hours after the last snowfall or after the emergency has been terminated, it is not a violation of this section to thereafter park a vehicle on the street.

(2001 Code, § 1310.01) (Ord. 06-15, passed - -)

TITLE IX: GENERAL REGULATIONS

Chapter

90. ANIMALS

91. FIRE PREVENTION

92. HEALTH PROVISIONS

93. PARKS AND RECREATION

94. PUBLIC NUISANCES

95. STREETS AND SIDEWALKS

96. TREES

97. PREDATORY OFFENDERS

CHAPTER 90: ANIMALS

Section

90.01 General provisions

90.02 Running at large

90.03 Cleaning up of litter

90.04 Number of animals

90.05 Dangerous or potentially dangerous dog

90.06 Dangerous animals

90.07 Noisy animals

90.08 Farm and other small domestic animals

90.09 Steel leg hold traps

§ 90.01 GENERAL PROVISIONS.

(A) *License required.* All dogs and cats over four months of age, kept, harbored or maintained by their owner within the limits of the city must be licensed and registered as provided in this section. All owners must complete an application provided by the City Clerk and pay a license fee set by City Council resolution. This section does not apply to dogs used by police departments.

(B) *Vaccination required.*

(1) The applicant for a dog or cat license must show a current rabies vaccination certificate that a doctor qualified to practice veterinary medicine has vaccinated the animal against rabies, and that the effective period of the vaccination has not expired at the time the license is issued.

(2) The vaccine must be of a type approved and authorized for use by the United States Department of Agriculture.

(C) *Tags.* Upon payment of the license fee, the City Clerk will issue the owner a license certificate and a metallic tag for each animal licensed. The tag will have stamped on it a number corresponding to the number on the license certificate.

(D) *Collar.* Every owner of a dog or cat required to be licensed will be required to provide the animal with a collar to which the license tag must be affixed, and the collar with tag attached must be worn by the animal at all times.

(E) *Duplicate tags; transfer.* In the event an animal tag is lost or destroyed, a duplicate will be issued by the City Clerk upon presentation of the proof of a paid license and upon payment for the duplicate license. Tags are not transferable from one animal to another, and no refunds will be made on any license fee.

(2001 Code, § 905.01)

§ 90.02 RUNNING AT LARGE.

(A) *Definition.* An animal is ***RUNNING AT LARGE*** if it:

(1) Is not effectively contained within a fenced area; or

(2) Is on any unfenced area or lot abutting a street, alley, public park, public place or upon any other private land without being effectively restrained by chain, leash or an electronic pet containment device from moving beyond such unfenced area or lot; or

(3) Is on any street, public park, school grounds or public place without being effectively restrained by chain or leash.

(B) *General rule.* The license holder, owner or keeper of any animal will be responsible for the effective restraint of the animal and must not permit the animal to run at large.

(C) *On owner's premises.* When an animal is on its owner's premises, it will be considered to be within the effective direction, supervision and control of the owner.

(D) *Impounding.* Any officer or any person duly authorized by the city may capture and seize any animal found running at large within the city contrary to the provisions of this section.

(E) *Redemption.* Any animal seized and impounded may be redeemed by any person producing a license or proving ownership by a statement in writing within five days after such seizure and impounding and by paying the impound fee, plus any additional boarding costs, redemption fees, license fees or special call-back services costs incurred by the city by the impoundment and, upon presentation of payment, the city will release the animal to the owner. If the animal is unlicensed, a license must be obtained before it may be released. If the owner of the seized or impounded animal under the provisions of this section does not reclaim possession of the animal in compliance with the foregoing provisions within five days after the seizure or impounding, the owner will forfeit all right of property in the animal.

(F) *Interfering with enforcement.* A person must not interfere with any city official, animal control officer or police officer while engaged in performing work under the provisions of this section.

(G) *Disposition of unclaimed animals.* At the expiration of five days from the time the animal is impounded as provided for in this section, if the animal is not reclaimed according to the provisions in this section, it will be the duty of the city to dispose of the animal in

a humane manner and according to law.

§ 90.03 CLEANING UP OF LITTER.

(A) The owner of any animal or any person having the custody or control of any animal will be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner.

(B) A person who owns, keeps or harbors an animal must not allow or cause the animal to be on property, other than the owner's own property, without having tools or equipment in his or her immediate possession that are suitable for the removal of animal fecal material.

(C) All fecal materials deposited by the animal must be promptly and effectively removed from the ground or surface and deposited in a sanitary manner.

(D) With the exception of parks in the city, a person in control of an animal must not cause or permit any animal to be on any property, public or private, not owned or possessed by the person.

(E) The provisions of this section will not apply to the ownership or use of civilian service dogs or police enforcement dogs.

(2001 Code, § 905.5) (Ord. 09-01, passed - -)

§ 90.04 NUMBER OF ANIMALS.

(A) *Limitation on number of dogs and cats.* Notwithstanding a special animal permit, a person must not keep more than a total of three dogs or three cats, or a combination of three dogs and/or cats, that are older than four months on any residential premises within the city.

(B) *Special animal permit.* It is unlawful for any person to exceed the number of dogs or cats limited by division (A) above or animals limited by § 90.08 without first obtaining a special animal permit from the Council as provided in this section.

(1) *Application for special animal permit.*

(a) Application for a special permit must be made to the City Clerk upon a form provided by the city. A completed application, accompanied by the appropriate fee, will be submitted to the City Council for approval.

(b) The permit shall only be issued after an inspection of the premises and a finding of fact that no nuisance will be created by issuing the permit.

(c) The Council may impose additional restrictions, limitations, conditions or prohibitions that the Council deems reasonably necessary to protect any person or neighboring use from unsanitary conditions, unreasonable noise, odors or annoyance, or to protect the public health, safety or welfare.

(d) No roosters shall be permitted.

(2) *Permit term.* The annual term of the permit begins on January 1 and ends on December 31 unless sooner revoked.

(3) *Annual fee.* The annual fee for such permit shall be set by City Council resolution. Permit fees will not be prorated for a portion of a year.

(4) *Inspection requirement.* The city shall inspect the premises prior to issuing a permit.

(5) *Notification.* Upon receipt of an initial or renewal application, the city shall notify all residential properties within 350 feet of the applicant's property line of the Council's consideration of the special permit.

(6) *Modification or revocation of permit.* Such a permit may be monitored by the Community Development Department and may be modified or revoked by city staff for failure to comply with the terms of this section, or to conform to such restrictions, limitations, conditions or prohibitions imposed by the permit.

(7) *Effective date.* Such modification or revocation shall be effective ten days following the mailing of written notice by certified mail to the permittee.

(8) *Appeal.* The permittee may appeal the modification or revocation by serving a written request for a hearing upon the City Clerk within five days of receipt of the written notice. The appeal shall be heard by the Community Development Director or his or her designee.

(2001 Code, § 905.07) (Ord. 03-15, passed - -; Ord. 09-01, passed - -; Ord. 10-03, passed - -; Ord. 13-04, passed 9-9-2013)

§ 90.05 DANGEROUS OR POTENTIALLY DANGEROUS DOG.

(A) *Adoption by reference.* Except as otherwise provided in this section, the regulatory and procedural provisions of Minn. Stat. §§ 347.50 to 347.565, as they may be amended from time to time (commonly referred to as the "dangerous dog regulations") are adopted by reference.

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

DANGEROUS DOG. A dog that:

- (a) Has when unprovoked, inflicted substantial bodily harm on a human being on public or private property;
- (b) Has killed a domestic animal when unprovoked while off the owner's property;
- (c) Has attacked one or more persons on two or more occasions; or
- (d) Has been found to be potentially dangerous and after the owner has notice of the same, the dog aggressively bites, attacks or endangers the safety of humans or domestic animals.

DOG. Both the male and female of the canine species, commonly accepted as domesticated household pets.

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.

OWNER. Any person or persons, firm, corporation, organization, department or association owning, possessing, harboring, keeping, having an interest in, or having care, custody or control of a dog.

MAINTENANCE COSTS. Any costs incurred as a result of seizing an animal for impoundment, including, but not limited to, the capturing, impounding, keeping, treating, examining, securing, confining, feeding, destroying, boarding or maintaining seized animals, whether these services are provided by the city or the pound.

POTENTIALLY DANGEROUS DOG. A dog that:

- (a) Has when unprovoked, inflicted a bite on a human or domestic animal on public or private property;
- (b) Has when unprovoked, chased or approached a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the owner's property, in an apparent attitude of attack; or
- (c) Has a known propensity, tendency or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

PROPER ENCLOSURE. Securely confined indoors or in a securely enclosed and locked pen or structure suitable to prevent the dog from escaping and to provide protection for the dog from the elements. A ***PROPER ENCLOSURE*** does not include a porch, patio or any part of a house, garage or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the dog from exiting. The enclosure shall not allow the egress of the dog in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- (a) A minimum overall floor size of 32 square feet;
- (b) Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support post shall be one and one-fourth inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;

(c) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and openings in the wire shall not exceed two inches; and

(d) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and openings in the wire shall not exceed two inches. The gate shall be self-closing and self-locking. The gate shall be locked at all times when the dog is in the pen or kennel.

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

UNPROVOKED. The condition in which the dog is not purposely excited, stimulated, agitated or disturbed.

(C) *Declaration of dangerous or potentially dangerous dog.*

(1) A police officer, community service officer, animal control officer or other authorized city employee may declare a dog to be dangerous or potentially dangerous when the officer has probable cause to believe that a dog is dangerous or potentially dangerous. The following factors will be considered in determining a dangerous or potentially dangerous dog:

(a) Whether any injury or damage to a person by the dog was caused while the dog was protecting or defending a person or the dog's offspring within the immediate vicinity of the dog from an unjustified attack or assault;

(b) The size and strength of the dog, including jaw strength, and the animal's propensity to bite humans or other domestic animals; and

(c) Whether the dog has wounds, scarring, is observed in a fight, or has other indications that the dog has been or will be used, trained or encouraged to fight with another animal or whose owner is in possession of any training apparatus, paraphernalia or drugs used to prepare such dogs to fight with other animals.

(2) Beginning six months after a dog is declared dangerous or potentially dangerous, an owner may request annually that the city review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, neutering, environment, completion of obedience training or other factors. If enough evidence is provided, the city may rescind the designation.

(3) Exceptions:

(a) The provisions of this section do not apply to dogs used by law enforcement; and

(b) Dogs may not be declared dangerous or potentially dangerous if the threat, injury or danger was sustained by a person who was:

1. Committing a willful trespass or other tort upon the premises occupied by the owner of the dog;

2. Provoking, tormenting, abusing or assaulting the dog, or who can be shown to have a history of repeatedly provoking, tormenting, abusing or assaulting the dog; or

3. Committing or attempting to commit a crime.

(D) *License required.* The owner must annually license dangerous and potentially dangerous dogs with the city and must license a newly declared dangerous or potentially dangerous dog within 14 days after notice that a dog has been declared dangerous or potentially dangerous. Regardless of any appeal that may be requested, the owner must comply with the requirements of Minn. Stat. § 347.52(a) and (c), as they may be amended from time to time, regarding proper enclosures and notification to the city upon transfer or death of the dog, until and unless a hearing officer or court of law reverses the declaration.

(1) *Process for dangerous dogs.* The city will issue a license to the owner of a dangerous dog if the owner presents sufficient evidence that:

(a) There is a proper enclosure;

(b) Written proof that there is a surety bond by a surety company authorized to conduct business in the state in the sum of at least \$300,000, payable to any person injured by a dangerous dog, or receipt of a copy of a policy of liability insurance issued by an insurance company authorized to do business in the state in the amount of at least \$300,000, insuring the owner for any personal injuries inflicted by the dangerous dog. The surety bond or insurance policy shall provide that no cancellation of the bond or policy will be made unless the city is notified in writing by the surety company or the insurance company at least ten days prior to the cancellation;

(c) The owner has paid the annual license fee for dangerous dogs as may be established by the City Council;

(d) The owner has had a microchip identification implanted in the dangerous 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, it may be implanted by the city at the owner's expense; and

(e) The owner provides proof that the dog has been sterilized. If the owner does not sterilize the dog within 30 days, the city may seize the dog and sterilize it at the owner's expense.

(2) *Process for potentially dangerous dogs.* The city will issue a license to the owner of a potentially dangerous dog if the owner presents sufficient evidence that:

(a) There is a proper enclosure;

(b) The owner has paid the annual license fee; and

(c) The owner has had a microchip identification implanted in the potentially dangerous 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, it may be implanted by the city at the owner's expense.

(3) *Inspection.* A pre-license inspection of the premises to ensure compliance with the city code is required. If the city issues a license to the owner of a dangerous or potentially dangerous dog, the city shall be allowed at any reasonable time to inspect the dog, the proper enclosure and all places where the animal is kept.

(4) *Warning symbol.* The owner of a dangerous dog licensed under this section must post a sign with the uniform dangerous dog warning symbol on the property in order to inform children that there is a dangerous dog on the property. The sign will be provided by the city upon issuance of the license.

(5) *Tags.* A dangerous dog licensed under this section must wear a standardized, easily identifiable tag at all times that contains the uniform dangerous dog symbol, identifying the dog as dangerous. The tag shall be provided by the city upon issuance of the license.

(6) *License fee.* The city will charge the owner an annual license fee for a dangerous or potentially dangerous dog as may be established by the City Council.

(E) *Properly restrained in proper enclosure or outside of proper enclosure.* While on the owner's property, an owner of a dangerous or potentially dangerous dog must keep it in a proper enclosure. Inside a residential home, there must be a secured area maintained where the dog will stay when persons other than family members are present. If the dog is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash no longer than four feet and under the physical restraint of an adult. The muzzle must be made in a manner that will prevent the dog from biting any person or animal but that will not cause injury to the dog or interfere with its vision or respiration.

(F) *Notification requirements to city.*

(1) *Relocation or death.* The owner of a dog that has been declared dangerous or potentially dangerous must notify the City Clerk or Police Department in writing if the dog is to be relocated from its current address or if the dog has died. The notification must be given in writing within 30 days of the relocation or death. The notification must include the current owner's name and address, and the new owner's name and the relocation address. If the relocation address is outside of the city, the city may notify the local law enforcement agency of the transfer of the dog into its jurisdiction.

(2) *Renter's obligations.* A person who owns or possesses a dangerous or potentially dangerous dog and who will rent property from another where the dog will reside must disclose to the property owner prior to entering the lease agreement and at the time of any lease renewal periods that the person owns or possesses a dangerous or potentially dangerous dog that will reside at the property. A dog owner, who is currently renting property, must notify the property owner within 14 days of city notification if the owned dog is newly declared as dangerous or potentially dangerous and the owner keeps the dog on the property.

(3) *Transfer of ownership into the city.* No dog that has been previously determined to be dangerous or potentially dangerous by another jurisdiction shall be kept, owned or harbored in the city, unless the dog's owner complies with the requirements of this section prior to bringing the dog into the city. Dogs in violation of this division are subject to impoundment and destruction.

(G) *Seizure.* The city may immediately seize any dangerous or potentially dangerous dog if:

(1) After 14 days after the owner has notice that the dog is declared dangerous or potentially dangerous, the dog is not validly licensed and no appeal has been filed;

(2) After 14 days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required or such required insurance is cancelled;

(3) The dog is not maintained in a proper enclosure;

(4) The dog is outside the proper enclosure and not under proper restraint, as required by division (E) above;

(5) After 30 days after the owner has notice that the dog is dangerous, the dog is not sterilized, as required by division (D)(1)(e) above; and

(6) The dog's microchip has been removed.

(H) *Reclamation.* A dog seized under division (G) above may be reclaimed by the owner of the dog upon payment of maintenance costs, and presenting proof to the city that the requirements of this section have been met. A dog not reclaimed under this division (H) within seven days may be disposed of and the owner will be liable to the city for maintenance costs. A person claiming an interest in a seized dog may prevent disposition of the dog by posting a security in an amount sufficient to provide for the dog's maintenance costs. The security must be posted with the city within seven days of the seizure inclusive of the date seized.

(I) *Subsequent offenses: seizure.* If a person has been convicted of violating a provision of this section, and the person is charged with a subsequent violation relating to the same dog, the dog may be seized. If the owner is convicted of the crime for which the dog was seized, the court may order that the dog be destroyed in a proper and humane manner and the owner pay the maintenance costs. If the owner is not convicted and the dog is not reclaimed by the owner within seven days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of, used for research or destroyed.

(J) *Notice; hearings.*

(1) *Notice.* After a dog has been declared dangerous or potentially dangerous or has been seized for destruction, the city shall give notice by delivering or mailing it to the owner of the dog, or by posting a copy of it at the place where the dog is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice shall include:

(a) A description of the seized dog; the authority for and purpose of the declaration and seizure; the time, place and circumstances under which the dog was declared; and the telephone number and contact person where the dog is kept;

(b) A statement that the owner of the dog may request a hearing concerning the declaration and that failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing;

(c) A statement that if an appeal request is made within 14 days of the notice, the owner must immediately comply with the requirements of Minn. Stat. § 347.52(a) and (c), as they may be amended from time to time, regarding proper enclosures and notification to the city upon transfer or death of the dog, until such time as the hearing officer issues an opinion;

(d) A statement that if the hearing officer affirms the dangerous dog declaration, the owner will have 14 days from receipt of that decision to comply with all other requirements of Minn. Stat. §§ 347.51, 347.515 and 347.52, as they may be amended from time to time;

(e) A form to request a hearing; and

(f) A statement that if the dog has been seized, all maintenance costs of the care, keeping and disposition of the dog pending the outcome of the hearing are the responsibility of the owner, unless a court or hearing officer finds that the seizure or impoundment was not reasonably justified by law.

(2) *Right to hearing.*

(a) After a dog has been declared dangerous, potentially dangerous or has been seized for destruction, the owner may appeal in writing to the city within 14 days after notice of the declaration or seizure. Failure to do so within 14 days of the date of the notice will terminate the owner's right to a hearing. The owner must pay a \$100 fee for an appeal hearing.

(b) The appeal hearing will be held within 14 days of the request. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(c) If the declaration or destruction is upheld by the hearing officer, actual expenses of the hearing up to a maximum of \$1,000, as well as all maintenance costs, will be the responsibility of the dog's owner. The hearing officer shall issue a decision on the matter within ten days after the hearing. The decision shall be delivered to the dog's owner by hand delivery or registered mail as soon as practical and a copy shall be provided to the city. The decision of the hearing officer is final.

(K) *Destruction of certain dogs.* The Police Chief and/or hearing officer are authorized to order the destruction or other disposition of any dog, after proper notice is given pursuant to division (J) above and upon a finding that:

(1) The dog has habitually destroyed property or habitually trespassed in a damaging manner on property of persons other than the owner;

(2) The dog has been declared dangerous, the owner's right to appeal hereunder has been exhausted or expired and the owner has failed to comply with the provisions of this section;

(3) It is determined that the dog is infected with rabies;

(4) The dog inflicted substantial or great bodily harm on a human on public or private property without provocation;

(5) The dog inflicted multiple bites on a human on public or private property without provocation;

(6) The dog bit multiple human victims on public or private property in the same attack without provocation;

(7) The dog bit a human on public or private property without provocation in an attack where more than one dog participated in the attack; or

(8) The dog poses a danger to the public's health, safety or welfare. In determining whether the dog poses a danger to the public's health, safety or welfare, the following factors may be considered:

(a) The dog weighs more than 20 pounds;

(b) The strength of the dog, including jaw strength;

(c) The dog's tolerance for pain;

(d) The dog's tendency to refuse to terminate an attack;

(e) The dog's propensity to bite humans or other domestic animals;

(f) The dog's potential for unpredictable behavior;

(g) The dog's aggressiveness; and

(h) The likelihood that a bite by the dog will result in serious injury.

(L) *Concealing of dogs.* No person may harbor, hide or conceal a dog that the city has the authority to seize or that has been ordered into custody for destruction or other proper disposition.

(M) *Dog ownership prohibited.*

(1) Except as provided below, a person shall not own a dog if the person has been:

(a) Convicted of a third or subsequent violation of divisions (D), (E) or (F) above or similar ordinance in another jurisdiction, or Minn. Stat. §§ 347.51, 347.515 or 347.52, as they may be amended from time to time;

(b) Convicted of second degree manslaughter due to negligent or intentional use of a dog under Minn. Stat. § 609.205(4), as it may be amended from time to time; or

(c) Convicted of gross misdemeanor harm caused by a dog under Minn. Stat. § 609.226(1), as it may be amended from time to time.

(2) Any person who owns a dangerous or potentially dangerous dog and is found to be in violation of any of the provisions of this section or had owned a dangerous or potentially dangerous dog but never achieved compliance with this section may be prohibited from ownership or custody of another dog for a period of five years after the original declaration. Any dog found to be in violation, may be impounded until due process is completed, pursuant to division (J) above.

(3) If any member of a household is prohibited from owning a dog in divisions (M)(1) or (M)(2) above, unless specifically approved with or without restrictions by the city, no person in the household is permitted to own a dog.

(N) *Dog ownership prohibition review.*

(1) Beginning three years after a conviction under division (M)(1) above that prohibits a person from owning a dog, and annually

thereafter, the person may request in writing to the Police Chief that the city review the prohibition.

(2) The city may consider such facts as the seriousness of the violation or violations that led to the prohibition, any criminal convictions, or other facts that the city deems appropriate. The city may rescind the prohibition entirely or rescind it with limitations. The city also may establish conditions a person must meet before the prohibition is rescinded, including, but not limited to, successfully completing dog training or dog handling courses.

(3) If the city rescinds a person's prohibition and the person subsequently fails to comply with any limitations imposed by the city or the person is convicted of any animal violation involving unprovoked bites or dog attacks, the city may permanently prohibit the person from owning a dog in this state.

(O) *Penalties.*

(1) Unless stated otherwise, any person who violates a provision of this section is guilty of a misdemeanor.

(2) Any person who is convicted of a second or subsequent violation of any provision of divisions (D), (E) or (F) above is guilty of a gross misdemeanor.

(3) Any person who violates division (M) above, whether an owner or household member, is guilty of a gross misdemeanor.

§ 90.06 DANGEROUS ANIMALS.

(A) *At large.* A person owning or harboring any vicious, dangerous or diseased animal must not permit such animal to run at large within the city. If the animal cannot be impounded after a reasonable effort, or cannot be impounded without serious risk to the person attempting to impound the animal, it may be immediately killed.

(B) *Bites.* Any animal that has bitten a person will immediately be impounded for at least ten days and kept apart from other animals until it is determined whether the animal has rabies. Impounding may be by the owner and need not be by the city, but if it is not by the city, the owner must notify the city and must furnish proof in writing that the animal is being impounded. On expiration of the ten days, if the animal does not have rabies, it may be released and the city must be notified just prior to the release. If the animal is impounded by the city, the animal may be reclaimed upon payment of the impound fee. Any animal that has been bitten by a rabid animal or believed to have been exposed to rabies must be impounded and kept in the same manner and for the same period of time.

(2001 Code, § 905.11)

§ 90.07 NOISY ANIMALS.

(A) *Habitual barking.* It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. **HABITUAL BARKING** shall be defined as barking for repeated intervals of at least five minutes, with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

(B) *Warrant required.* The city or police officer shall not enter the property of the owner of an animal described in this section unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction, as provided for in § 10.17(E), to search for and seize the animal.

§ 90.08 FARM AND OTHER SMALL DOMESTIC ANIMALS.

(A) *General rule.* A person may keep up to two farm animals, except roosters, or up to two Vietnamese pot-bellied pigs or up to two animals deemed similar by the Police Chief within the city. A person may keep more than two of the aforementioned animals if:

(1) The property upon which the animals are kept is greater than five acres and there is at least 350 feet between the animal enclosure and a residence; or

(2) A special permit is approved by the Council pursuant to § 90.04(B).

(B) *Stables.*

(1) *Construction.* Every stable, building or enclosure where any animal is kept will be constructed of material and in a manner

that allows it to be kept clean and sanitary.

(2) *Proximity to residences.* Every stable or other building occupied by authority of a special permit will, if located within 200 feet of any apartment, hotel, restaurant, retail food store, school, religious or hospital purposes, or residences other than those occupied by the owner or occupant of the premises upon which the animals are kept, be provided with a water-tight and fly-tight receptacle for manure of such dimensions as to contain all accumulations of manure. The receptacle must be emptied sufficiently often and in such manner as to prevent it from becoming a nuisance. The receptacle must be kept securely covered at all times except when open during the deposit or removal of manure or refuse. Manure must not be allowed to accumulate outside the receptacle.

(3) *Screening; sanitary conditions.* The Council or Health Officer may, in order to avoid a nuisance, require that any stable or other building where any animal is kept be screened tightly against flies, and that it be provided with running water, drain sewer connection, flooring impervious to water, and that measures be taken as may be necessary to ensure proper protection to public health and safety, as conditions precedent to the issuance of any special permit.

(C) *Small animal shelters; proximity to certain uses.* A chicken coop, dove cote, dog kennel facility (which is a facility designed to contain more than three dogs), rabbit warren or other yard or establishment where small animals or fowls are kept, must not be maintained closer than 100 feet from any apartment, hotel, restaurant, boarding house, retail food store, building used for school, religious or hospital purposes, or residence other than occupied by the owner or occupant of the premises where the creatures are kept.

(D) *Cleaning animal shelters.* All structures, pens, coops or yards where animals or fowls are kept or permitted to be, must be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odors. The interior walls, ceiling, floors, partitions, appurtenances of all the structures must be whitewashed or painted annually or as often as the city directs. The city, upon the complaint of any individual, will inspect any structure or premises and issue any order as may be necessary to carry out the provisions of this section.

§ 90.09 STEEL LEG HOLD TRAPS.

(A) *Prohibited.* No person may set or possess steel leg hold traps, also known as steel jump traps, within the city.

§ 90.10 KEEPING OF DANGEROUS EXOTIC ANIMALS OR DANGEROUS WILD, NATIVE ANIMALS.

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

DANGEROUS EXOTIC ANIMALS. Any mammal, bird, amphibian or reptile not native to the state, not usually domesticated, and of a species that, due to its size, wild nature or poisonous venom, is dangerous to humans. By way of example, and not limitation, the term includes jaguars, cougars, ocelots, leopards, panthers, lions, tigers, cheetahs, gorillas, baboons, coral snakes.

DANGEROUS WILD NATIVE ANIMALS. Any mammal or reptile native to Minnesota, not usually domesticated and of a species that, due to its size, are bison, wolves, bears, rattlesnakes, raccoons, porcupines, deer, elk, mink, skunk, fox and badgers.

(B) *Prohibited.* The owning, keeping and maintaining of a dangerous exotic or a dangerous wild animal within the city is prohibited.

(C) *Exceptions.* This section does not apply to:

(1) Animals that are temporarily brought into the city for the purpose of participating in an educational program, circus or show, if protective measures are provided to adequately prevent such animals from escaping or injuring the public;

(2) Unconfined wild native animals presently indigenous to the county that roam free; or

(3) Wild native animals kept in confinement by zoos, circuses or nature centers, if protective measures are provided to adequately prevent such animals from injuring the public are provided.

(2001 Code, § 905.19) (Ord. 10-03, passed - -)

Section

- 91.01 Code adopted
- 91.02 Appeals
- 91.03 Administration, Fire Prevention Division
- 91.04 Amendments
- 91.05 Permit fees
- 91.06 Open burning
- 91.07 Fire lanes
- 91.08 Obstruction of fire hydrants
- 91.09 Fire protection system and false alarms
- 91.10 Fires or barbeques on balconies or patios
- 91.11 Liquefied petroleum gases
- 91.12 Driving over fire hose
- 91.13 Lock boxes

§ 91.01 CODE ADOPTED.

(A) The International Fire Code, published by the International Conference of Building Officials, as adopted by the state pursuant to Minn. Stat. Chapter 299F, as it may be amended from time to time, is adopted by reference, and shall be known as the "Minnesota State Fire Code."

(B) The Minnesota State Fire Code ("MSFC") shall be the Fire Prevention Code of the city. A copy of the MSFC will be kept available for public use at the Fire Department.

(2001 Code, § 917.01) (Ord. 11-04, passed - -)

§ 91.02 APPEALS.

Pursuant to Minn. Stat. § 299F.011(5)(a), as it may be amended from time to time, any appeals from orders issued under the Fire Prevention Code shall be conducted pursuant to § 10.98(F) through (H).

(2001 Code, § 917.03) (Ord. 11-04, passed - -)

§ 91.03 ADMINISTRATION, FIRE PREVENTION DIVISION.

(A) The Division of Fire Prevention is established within the Fire Department under the direction of the Fire Code Official.

(B) The Fire Code Official shall be appointed by the Fire Chief.

(C) The Fire Code Official shall have the authority to appoint inspectors and other employees.

(D) The function of the Division of Fire Prevention shall be the implementation, administration and enforcement of the provisions of the Fire Prevention Code.

(2001 Code, § 917.05) (Ord. 11-04, passed - -)

§ 91.04 AMENDMENTS.

(A) Minn. Stat. Chapter 299F, as it may be amended from time to time, allows the city to adopt provisions that are more restrictive than the standards in the MSFC.

(B) It is the intent and policy of the city to implement and enforce the additions to the MSFC contained in this Code.

(2001 Code, § 917.07) (Ord. 11-04, passed - -)

§ 91.05 PERMIT FEES.

(A) Permits required by the Fire Code Official, pursuant to the MSFC, shall be obtained from the Fire Code Official.

(B) Unless otherwise specified, the applicant for any permit required under the terms of the Fire Prevention Code must, before obtaining the permit, pay the permit fee as determined by the city.

(2001 Code, § 917.09) (Ord. 11-04, passed - -)

§ 91.06 OPEN BURNING.

Open burning is governed by Minn. Stat. Chapter 88, as it may be amended from time to time.

(A) *Fuels.* Rubber, plastics, chemically treated material, hazardous wastes, yard waste, demolition debris, garbage, trash, construction debris or flammable liquids shall not be used for fuel.

(B) *Permission to start fires.* A permit to start a fire to burn vegetative materials or other materials allowed by the state statutes or official state rules and regulations shall be obtained prior to burning except in the case of recreational fires, as defined in Chapter 3 of the MSFC.

(C) *Recreational fires.* All recreational fires are governed by the State DNR, as prescribed by state statutes and the MSFC. Recreational fires must comply with the following:

(1) *Location.* Recreational fires shall not be conducted within 25 feet of a structure or any combustible material unless contained in a portable barbecue pit, or a well maintained, approved fire restrictive enclosure. Conditions that could cause a fire to spread to within 25 feet of a structure shall be eliminated prior to ignition.

(2) *Size.* Size of recreational fires may not exceed three-foot diameter by two feet in height and must be contained in an approved manner such as a portable barbecue pit, fire pit or fire ring.

(3) *Fire-extinguishing equipment.* Buckets, shovels, garden hoses or a fire extinguisher with a minimum 4-A rating shall be readily available for use at recreational fires.

(4) *Attendance.* An attendant shall supervise a recreational fire until such fire has been extinguished. Fires found to be unattended will be extinguished by the Fire Department.

(5) *Time restriction.* All recreational fires shall be extinguished by midnight.

(6) *Offensive smoke and odors.* Special consideration must be given to prohibit/control objectionable smoke or odorous conditions.

(7) *Discontinuance.* Fire Department personnel are authorized to require that recreational fires be immediately discontinued if it is determined that a hazardous condition exists or if the fire is creating offensive odors or smoke.

(8) *Burning restrictions.* The Fire Department may periodically restrict recreational fires due to hazardous, dry and windy weather conditions or based on MN DNR guidance.

§ 91.07 FIRE LANES.

(A) *Establishment.* The Fire Chief may require the establishment of fire lanes on public or private property as deemed necessary to ensure the movement of fire equipment is not obstructed or interfered with and so that access to buildings, structures, fire protection equipment and fire hydrants is not blocked or obstructed.

(B) *Posting.*

(1) After a fire lane has been established, the owner or occupant of the property, at the owner or occupant's own expense and within 30 days of the establishment of the fire lane, shall erect signs designating the area as a fire lane, and when there is curbing adjacent to the fire lanes, cause them to be painted yellow within the time period, weather permitting.

(2) The signs must be 12 inches by 18 inches, bearing the words "NO PARKING-FIRE LANE-CITY ORDINANCE," "NO PARKING-FIRE LANE-BY ORDER OF FIRE CHIEF" or "NO PARKING FIRE LANE" and must be white with red lettering and be clearly legible from a distance of 100 feet.

(3) Signs must be erected on posts adjacent to the fire lanes and be at least five feet in height and not more than 75 feet apart, unless the Fire Chief authorizes otherwise.

(C) *Violations.* It is a violation of this section to:

- (1) Park a vehicle in an established fire lane;
- (2) Leave a vehicle unattended in an established fire lane; or
- (3) Obstruct a fire lane in any manner.

(2001 Code, § 917.13) (Ord. 11-04, passed - -)

§ 91.08 OBSTRUCTION OF FIRE HYDRANTS.

(A) It is unlawful to park any vehicle in such a way as to obstruct a fire hydrant. The stopping or parking of a vehicle within ten feet of a fire hydrant is an obstruction of the hydrant and a violation of this section.

(B) It is unlawful to permit any non-vehicular object in such a way as to obstruct a fire hydrant. Any object within three feet of a fire hydrant is an obstruction of the hydrant and a violation of this section.

§ 91.09 FIRE PROTECTION SYSTEM AND FALSE ALARMS.

It is unlawful for any person to tamper with or in any way interfere with any element of any fire protection system within the city. It is unlawful for any person to give, or cause to be given, any alarm or other emergency condition when no fire or emergency condition exists.

§ 91.10 FIRES OR BARBECUES ON BALCONIES OR PATIOS.

(A) *Fires prohibited.* In any structure containing two or more vertically stacked residential units, a person must not kindle, maintain or cause any fire or open flame on any balcony above ground level, or on any ground floor patio immediately adjacent to or within 15 feet of the structure.

(B) *Storage of fuel.* A person must not store or use any fuel, barbecue, torch or other similar heating or lighting chemicals or devices in the locations designated in division (A) above.

(C) *Exception.* 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 balconies and patios when approved by the Fire Chief.

(2001 Code, § 917.15) (Ord. 11-04, passed - -)

§ 91.11 LIQUEFIED PETROLEUM GASES.

Rules for liquefied petroleum ("LP") gases are established by the MSFC.

(A) *Permits and reports of installation.*

(1) A permit must be obtained before installing a single container or the aggregate quantity of containers over 100 gallons of water capacity. The installer must submit plans to the Fire Chief for approval prior to installation.

(2) Wheeled agricultural type LP gas trailers are prohibited for storage uses, including at construction sites.

(3) All approved LP gas storage facilities must be placed on asphalted concrete, blacktop, crushed rock or equal surfaces to eliminate the maintenance and control of combustible vegetation, weeds and grass.

(4) All LP gas containers having a capacity of more than one pound which are sold, serviced or from which LP gas is dispensed must be clearly labeled with a sign reading: "LP gas flammable." The lettering must be red in color with a contrasting background. On containers of 500-gallon capacity or more, the letters must not be less than six inches in height with a three-fourths inch stroke and must be affixed to both sides of the tank or installation. Underground or mounded tank installations must be posted at the point of transfer.

(5) Solid devices, structures, obstructions, trees, shrubs or other appurtenances must not be placed adjacent to LP gas storage facilities so as to hinder or deter the applications of water or firefighting operations by the Fire Department.

(B) *Existing storage.* The Fire Chief is granted the authority to resurvey, inspect and evaluate existing storage facilities for the purposes of determining adequate or suitable fire protection, fire suppression or life safety requirements. Existing storage aboveground tanks in populated areas will be protected with Sub-Lime Insulative Coatings. New bulk storage of LP gases is prohibited within the city except if approved by the Fire Chief.

(C) *Storage of flammable liquids.* Storage of flammable liquids in outside aboveground tanks of 2,000 gallons water capacity or more is prohibited within the city, except if approved of by the Fire Chief.

(D) *Exception.* Existing aboveground outside storage tanks existing as of November 21, 1966 may be replaced through the permitting process with tanks of no greater capacity than the tank being replaced.

(2001 Code, § 917.17) (Ord. 11-04, passed - -)

§ 91.12 DRIVING OVER FIRE HOSE.

(A) No person, except authorized emergency vehicles, shall drive over an unprotected hose of any Fire Department when laid down on a street, private driveway or parking lot, streetcar track or public property, without the consent of a Fire Department official in command.

(B) Even when given consent, such person shall exercise due caution.

(2001 Code, § 917.19) (Ord. 11-04, passed - -)

§ 91.13 LOCK BOXES.

(A) *Purpose and intent.* Pursuant to 2007 State Fire Code Section 506.1, or as may be amended, it is the purpose of this section to authorize the Fire Department to require the installation or replacement of lock boxes at approved locations in the city where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes.

(B) *Type of lock boxes.* The lock boxes shall be of a type approved by the Fire Department and shall contain keys to gain necessary access to the structure or restricted area.

(C) *Purchase and installation of lock boxes.*

(1) The property owner is responsible for the purchase and installation of the lock box, which must be installed pursuant to the manufacturer's instructions and the installation shall be approved by the Fire Department.

(2) The Fire Department is responsible for the installation of the lock assembly for the lock box.

(D) *Fee.* The property owner is required to pay the Fire Department for the installation and replacement of the lock assembly for the lock box, pursuant to the Fee Schedule.

(Ord. 14-03, passed 8-11-2014)

Section

- 92.01 Public health nuisances
- 92.02 Garbage and rubbish
- 92.03 Required collection
- 92.04 Animal manure
- 92.05 Soil absorption systems
- 92.06 Water ponds
- 92.07 Cemeteries
- 92.08 Composting
- 92.09 Feeding waterfowl
- 92.10 Coal tar-based sealer

§ 92.01 PUBLIC HEALTH NUISANCES.

(A) *Declared.* The following activities and conditions are declared to be public health nuisances:

- (1) Any act done or committed by any person, or any substance or thing kept, maintained, placed or found in or upon any public or private place which is injurious or dangerous to the public health;
- (2) Any pursuit followed or act done by any person causing hurt, injury, annoyance, inconvenience or damage to the public;
- (3) Any vacant, unattended or defective property likely to cause harm to person or property;
- (4) Any pond or pool of stagnant water upon any premises, and any foul or dirty water or liquid when discharged through any drain, pipe or spout, or thrown into or upon any street, thoroughfare or premises to the injury and annoyance of the public;
- (5) Any obstruction caused or permitted on any street or sidewalk to the danger or annoyance of the public, and any stones, dirt, garbage, filth, slop, vegetable matter or other articles thrown or placed by any person on or in any street, alley, sidewalk or other public place or on any premises or any stream of water within the city which in any way may cause or is liable to cause any injury or annoyance to the public;
- (6) Any cellar, vault, private drain, pool, privy, septic tank, sewer or sink, upon any premises permitted to become nauseous, foul, offensive or injurious to the public health;
- (7) The placing, depositing or throwing, or causing to be placed, deposited or thrown of any rubbish, garbage, trash, dead animals or any other kind of waste materials, on any sidewalk, street, parkways, road shoulders or other public places, or on any private lots or premises in the city in such manner and extent as to render it unsightly, unclean or unsafe;
- (8) The abandonment, neglect or disregard of any premises so as to permit the premises to become unclean, with an accumulation of litter, weeds or waste upon the premises, or to permit the premises to become unsightly, unsanitary, obnoxious, a blight to the vicinity, or offensive to the senses or users of the public way abutting the premises, and to continue for a period longer than ten days;
- (9) Any violation of this chapter that endangers the health of the public if continued;
- (10) Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property; and
- (11) Any public health nuisance defined by the law.

(B) *Abatement of public health nuisance.*

(1) The Council or the Police Chief may order the owner, occupier or creator of any public health nuisance to remove the nuisance pursuant to Chapter 94.

(2) If the nuisance is not remedied within ten days from the order, the city may abate the nuisance pursuant to the process in Chapter 94 and assess the costs accordingly.

(2001 Code, § 600.01)

§ 92.02 GARBAGE AND RUBBISH.

(A) *Dumping or leaving rubbish.* It is unlawful for any person to deposit, unload, dump, discharge, throw out, place or maintain any rubbish, garbage, refuse, noxious matter or waste upon any public street, sidewalk or property.

(B) *Exceptions.*

(1) When awaiting collection, all garbage and rubbish must be properly placed in a container (including all loose contents), stored in the front yard, driveway, or public boulevard (behind the curb, not in the street) as follows:

(a) Containers may be set out no sooner than one day prior to collection day;

(b) Containers (and any material not picked up by the garbage hauler) must be removed from the front yard, driveway or public boulevard by the end of collection day.

(2) When not awaiting collection, garbage and rubbish must be properly stored in containers that are kept in rear yards, in accessory buildings or in garages. Containers may only be stored in a side yard if the setback of the home is at least 50 feet from the curb and they are stored behind the front building line of the home; if the setback of the home is not 50 feet from the curb, then the containers may only be stored in a side yard if they are screened by a hedge or enclosure so that they are not in immediate view of the public street.

(C) *Dumping on property.* It is unlawful for any person to dump or permit the dumping of garbage, refuse, rubbish, discarded articles and other debris upon any property without a permit pursuant to §§ 32.15 et seq.

(D) *Temporary outdoor storage containers.* **TEMPORARY OUTDOOR STORAGE CONTAINERS** include, but are not limited to, portable on-demand storage units and roll-off dumpsters. All temporary outdoor storage containers placed in a residential zoning district or on residential property shall be regulated by this section.

(1) *Permit.* No temporary outdoor storage containers may be placed in a residential zoning district or on residential property without a permit pursuant to Chapter 32. No more than two portable on-demand storage units and one roll-off dumpster will be permitted on a lot at one time. Staff reserves the right to restrict the number of temporary storage containers per lot to protect the general health, safety and welfare of the public. Either the residential property owner upon whose property the container will be placed or the company placing the temporary storage container may apply for a permit. The permit holder will be responsible for complying with the terms of this section.

(2) *Location.* Temporary outdoor storage containers shall be placed in private driveways whenever possible. However, all temporary outdoor storage containers must comply with the following requirements:

(a) They shall not obstruct any public sidewalk;

(b) They shall not be located within 30 feet of an intersection;

(c) They shall be located at least six feet from any residential building;

(d) They shall be located at least ten feet from any property line, unless located in a driveway or on a street;

(e) With the exception of new construction sites, they must be placed on a concrete or asphalt type surface. Wood planking or plywood shall be placed under the wheels or "feet" of the container;

(f) If located in a street or alley, flashers or reflective tape are required on or around the container.

(3) *Length of time.* Temporary outdoor storage containers shall not be located on an individual lot, parcel or site for more than 30 days during any 12 month period. Additional 30 day extensions may be granted by the city if the container is used in conjunction with a valid building permit for up to a total of 90 days annually for single-family residential and up to a total of 180 days annually for multi-

family residential.

(4) Any damage to public property, such as the street, curb or sidewalk as a result of the placement of the temporary storage container is the responsibility of the permit holder. Damage to public property is deemed to be a public nuisance and will result in emergency abatement procedures being followed pursuant to § 94.15(E) and the costs being assessed against the property pursuant to § 94.20(B).

(5) *Other.* Temporary outdoor storage containers shall be constructed in such a manner that its contents will be adequately contained and the container shall be maintained in good repair.

(Ord. 16-05, passed 5-23-2016)

§ 92.03 REQUIRED COLLECTION.

(A) *Collection.* Every residential household, multiple-residential dwelling and business in the city must have a solid waste collection at least on a monthly basis with a rubbish collection firm properly licensed by the city.

(B) *Exceptions.* The Council may exempt a residential household, multiple dwelling or business from the requirement of division (A) above, if that household, multiple-family residential dwelling or business can establish to the Council's satisfaction that an environmentally sound method of waste disposal has been provided.

(C) *Accumulation of rubbish.* Accumulation of rubbish in violation of this division (C) constitutes a public nuisance. The public nuisance may be abated and assessed pursuant to Chapter 94.

(2001 Code, § 600.05)

§ 92.04 ANIMAL MANURE.

(A) No person may bring or process any manure or other animal refuse matter upon any premises within the city from May 1 to September 1, except for the purpose of immediate application to the soil of those premises.

(B) This section does not apply to farmers.

(2001 Code, § 600.07) (Ord. 10-17, passed - -)

§ 92.05 SOIL ABSORPTION SYSTEMS.

Dakota County Ord. 113 is hereby adopted by reference.

§ 92.06 WATER PONDS.

In any case where surface waters have ponded or accumulated on property and caused a dangerous or hazardous condition endangering safety and health, the ponded or accumulated water constitutes a public nuisance. The public nuisance may be abated and assessed pursuant to Chapter 94.

(2001 Code, § 600.11)

§ 92.07 CEMETERIES.

No cemetery or place for the burial of the dead may be established or set apart and no existing cemeteries may be enlarged without permission and authority of the City Council. No interment of a dead human being or disposition of a dead human being may be made in any tomb, vault, cemetery or place within the city or within the enlargement of any cemetery, until the tomb, vault, cemetery or place, or the enlargement of the cemetery is set apart and devoted to that purpose with the consent of the City Council.

(2001 Code, § 600.13)

§ 92.08 COMPOSTING.

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

COMPOSTING. The controlled microbial degradation of source separated organic waste to yield a humus-like product or mulch to be used as a soil amendment.

FOOD WASTE. Vegetable, fruit and other organic waste resulting from the handling, preparing, cooking and consumption of food, except for meat, bones, whole eggs and dairy products.

MIXED MUNICIPAL SOLID WASTE. Garbage, refuse and other solid waste from residential, commercial and community activities that the generator of the waste aggregates for collection.

NON-MIXED MUNICIPAL SOLID WASTE. Infectious waste, pathological waste, industrial waste and construction debris.

ORGANIC WASTE. Yard waste and food waste. It also includes commercially available compost ingredients.

SOURCE SEPARATED. Organic waste that is separated from mixed municipal solid waste at the source by the waste generators for the purpose of composting in a container.

YARD WASTE. Garden wastes, leaves, lawn cuttings, sawdust, weeds, as well as non-woody shrub and tree prunings and twigs no larger than one-fourth inch diameter.

(B) *Composting regulations.* Composting is permitted in residential zoned districts, provided the following regulations are complied with.

(1) Composting must be conducted within an enclosed container, not to exceed a total of 100 cubic feet in volume for city lots of 10,000 square feet or less and 150 cubic feet for lots of greater area than 10,000 square feet. The containers must be constructed of durable material such as wood, plastic, fiberglass or metal fencing material. Plastic bags or paper bags are not allowed.

(2) Only organic waste, including food and yard waste, wood, ash, straw and commercially available compost ingredients to accelerate composting may be placed in the compost container.

(3) Prohibited materials: the following materials must not be placed in a composting container: meat, bones, whole eggs, dairy products, unshredded branches or logs, weeds heavily loaded with seeds, plastic, synthetic fiber, human or pet wastes, diseased plants, any other mixed or non-mixed municipal solid waste.

(4) Compost must be properly managed to minimize odor generation and promote effective decomposition of the material.

(5) The compost container must be located in the rear yard and placed no closer than 30 feet from any habitable building, 20 feet from the street on a corner lot and at least five feet from the side and rear yard lines.

(2001 Code, § 600.15)

§ 92.09 FEEDING WATERFOWL.

(A) *Policy and purpose.* Waterfowl waste deposited near bodies of water or within the watershed can have deleterious effects upon the environmental conditions within those bodies of water. In addition, such waste from waterfowl and nuisance wildlife may spread bacteria, viruses and parasites causing illness and disease. By enactment of this section, the City Council intends to protect the public health, safety and welfare of the citizens of the city from such effects.

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

NUISANCE WILDLIFE. Includes wildlife that is commonly considered aggressive, dangerous or the carriers of rabies, viruses, diseases and parasites, and includes wildlife such as, but not limited to, raccoons, foxes, opossums and coyotes. **NUISANCE WILDLIFE** excludes non-aggressive wildlife such as, but not limited to songbirds, squirrels and rabbits or any small animal kept on residential property as authorized by a special written permit issued by the City Council pursuant to § 90.04(B).

WATERFOWL. Includes, but is not limited to, geese, ducks and sea gulls.

(C) *Feeding prohibited.* No person may feed waterfowl or nuisance wildlife on private or public property in the city or place or permit to be placed on the ground, shoreline, body of water or structure any food, food by-products, garbage or animal food, which may reasonably be expected to intentionally result in waterfowl or nuisance wildlife feeding.

(D) *Exceptions.* The prohibition against feeding waterfowl or nuisance wildlife shall not apply to the following:

(1) Veterinarians who have custody of or manage waterfowl;

(2) Persons who, acting within the scope and course of their employment with any governmental entity, have custody of or manage waterfowl or nuisance wildlife;

(3) Persons who are trapping or taking waterfowl or nuisance wildlife where such trapping or taking is authorized pursuant to a permit issued by the State Department of Natural Resources; and

(4) Educational facilities.

(E) *Penalties.* Violations of this section may result in a written warning from the city or in an administrative citation, pursuant to § 10.98.

§ 92.10 COAL TAR-BASED SEALER.

(A) *Purpose.*

(1) The city understands that lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources and contribute to the general health and welfare of the community.

(2) The use of sealers on asphalt driveways is a common practice; however, scientific studies on the use of driveway sealers have demonstrated a relationship between stormwater runoff and certain health and environmental concerns.

(3) The purpose of this section is to regulate the use of sealer products within the city in order to protect, restore and preserve the quality of its waters.

(B) *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 section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ASPHALT-BASED SEALER. A petroleum-based sealer material that is commonly used on driveways, parking lots and other surfaces and which does not contain coal tar.

COAL TAR. A byproduct of the process used to refine coal.

COAL TAR-BASED SEALER. A sealer material containing coal tar that is commonly used on driveways, parking lots and other surfaces.

MPCA. The Minnesota Pollution Control Agency.

PAHs. Polycyclic Aromatic Hydrocarbons, which is a group of organic chemicals formed during the incomplete burning of coal, oil, gas or other organic substances. It is present in coal tar and believed harmful to humans, fish and other aquatic life.

(C) *Use of coal tar-based sealer prohibited.*

(1) No person shall apply any coal tar-based sealer to any driveway, parking lot or other surface within the city.

(2) No person shall contract with any commercial sealer product applicator, residential or commercial developer, or any other person for the application of any coal tar-based sealer to any driveway, parking lot or other surface within the city.

(3) No commercial sealer product applicator, residential or commercial developer, or other similar individual or organization shall direct any employee, independent contractor, volunteer or other person to apply any coal tar-based sealer to any driveway, parking lot or other surface within the city.

(D) *Exemption.* Upon the express written approval from both the city and the MPCA, a person conducting bona fide research on the effects of coal tar-based sealer or PAHs on the environment shall be exempt from the prohibitions provided in this section.

(E) *Asphalt-based sealer products*. The provisions of this section shall only apply to use of coal tar-based sealer in the city and shall not affect the use of asphalt-based sealer within the city.

(2001 Code, § 600.19) (Ord. 12-10, passed - -)

CHAPTER 93: PARKS AND RECREATION

Section

- 93.01 Intent and purpose
- 93.02 Authority
- 93.03 Definitions
- 93.04 Park hours
- 93.05 General conduct within city parks
- 93.06 Restricted activities
- 93.07 Permit procedures and fees
- 93.08 Domestic animals
- 93.09 Vehicles
- 93.10 Use of alcohol within a park facility
- 93.11 Protection of property, structures and natural resources
- 93.12 Liability
- 93.13 Restitution and enforcement

§ 93.01 INTENT AND PURPOSE.

- (A) The City Council values recreation and open space and has provided park facilities throughout the city. City parks and park facilities are intended for the use and enjoyment of all residents and park visitors. To assure all residents and park visitors are able to enjoy the city parks and facilities, it is necessary to regulate activities and conduct within the park facilities.
- (B) This chapter regulates the use of city park facilities to promote, protect and provide for the health, safety, welfare and comfort of residents and park visitors within the city. The regulations in this chapter are also intended to protect the environment and the natural resources entrusted to the city's care.

(2001 Code, § 825.01)

§ 93.02 AUTHORITY.

The City Manager will administer the parks and recreation policies of the city. The City Manager has the right to issue administrative rules and regulations governing the operation of city parks. The City Manager may delegate or assign any or all of the duties and responsibilities of this chapter to the Parks and Recreation Director or other city personnel. The actions of the Parks and Recreation Director shall have the same force and effect as if taken by the City Manager.

(2001 Code, § 825.03)

§ 93.03 DEFINITIONS.

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

3.2% MALT LIQUOR. The definition given it in Minn. Stat. Chapter 340A, as it may be amended from time to time.

DEPARTMENT OF PARKS AND RECREATION. The Department established by the City Council to manage the city park system.

DOMESTIC ANIMAL. A dog or cat.

INTOXICATING LIQUOR. The definition given it in Minn. Stat. Chapter 340A, as it may be amended from time to time.

MOTORIZED RECREATIONAL VEHICLE. Any self-propelled, off-the-road or all-conveyance vehicle, including but not limited to a snowmobile, mini-bike, amphibious vehicle, motorcycle, motor scooter, go-cart, trail bike, dune buggy or four-wheel drive vehicle.

NUDE. Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast with less than a full covering or any portion below the top of the areola.

PARK. A park, playground, swimming pool, golf course, ice arena, lake, pond, stream, trail, nature area, open space area and recreation center under the control of the city. **PARK** shall also mean any other property owned, leased, used or controlled, wholly or in part, by the city for park or recreational use. **PARK** also includes roadways and parking areas within the parks.

PARK VISITOR. Any person, firm, partnership, association, corporation, governmental unit, company or organization of any kind within a park.

PARKS AND RECREATION DIRECTOR. The person appointed by the City Manager to serve as the chief administrative officer of the city park system. The **DIRECTOR** is the head of the Department of Parks and Recreation.

VEHICLE. Any motorized, propelled, animal-drawn or human-powered machine used to convey people, animals or property.

WATERCRAFT. A boat, canoe, raft or any other object or apparatus used to carry people, animals or property on water.

WILDLIFE. All living creatures, not human, wild by nature, endowed by sensation and power or voluntary motion, including quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks.

(2001 Code, § 825.05)

§ 93.04 PARK HOURS.

All parks will close at 10:00 p.m. each day and remain closed until 6:00 a.m. on the following day, except:

- (A) Activities conducted under a permit issued pursuant to § 93.07;
- (B) Haskell Park will close at 9:00 p.m. and remain closed until 5:00 a.m. on the following day;
- (C) City-sponsored activities that, due to the nature of the activity, cannot be held during the time when parks are open; and
- (D) City employees or city agents who are conducting maintenance, construction or repair work on the property or buildings.

(2001 Code, § 825.07)

§ 93.05 GENERAL CONDUCT WITHIN CITY PARKS.

It is unlawful for any person in a park to:

- (A) Use threatening, abusive, insulting, obscene or indecent language; or to act in an indecent, lascivious or improper manner; commit any nuisance; appear nude; or do any act that constitutes a breach of the public peace;
- (B) Misuse park property in one or more of the following ways: in a manner that it was not designed or intended for; in a manner that would likely cause damage or injury to the person using the property, the property itself or others on or near the property; or in a manner that is disruptive or offensive to other park users or person;

- (C) Prevent or hinder usage of park equipment by children and their chaperones;
 - (D) Disturb, harass or interfere with any park visitor or park visitor's property;
 - (E) Deposit, scatter, drop or abandon any bottle, can, broken glass, cigarette butts, sewage, waste, trash, rubbish or other material, except in receptacles provided for such purpose;
 - (F) Possess glass beverage bottles or glass beverage containers;
 - (G) Gamble or participate in any game of chance unless it is part of an organized Department of Parks and Recreation event;
 - (H) Drop, throw or otherwise leave unattended, lighted matches, burning cigars, cigarettes, tobacco, paper or other combustible materials;
 - (I) Play the game of golf, engage in putting, practice swinging or the striking of any golf balls or other objects in any park, except at a designated golf course or training facility;
 - (J) Remove any wildlife, living or dead from a park. Any wildlife removed from a park or taken contrary to the provisions of this section or state statutes is considered contraband and subject to seizure and confiscation; and/or
 - (K) Impersonate any city employee or interfere with, harass or hinder city employees in the discharge of their duties.
- (2001 Code, § 825.09) (Ord. 08-03, passed - -)

§ 93.06 RESTRICTED ACTIVITIES.

The activities in this section may be conducted within a park pursuant to the following regulations.

- (A) *Aircraft, hot air balloons and parachutes.* No park visitor may use any land or body of water within a park as a starting or landing field for aircraft, hot air balloons or parachutes, without first obtaining a permit pursuant to § 93.07.
- (B) *Bicycling.* It is unlawful for any park visitor to operate a bicycle except on park designated bikeways and roadways, and except as close to the right-hand side as conditions allow.
- (C) *Boating.* With regard to boating, it is unlawful for any park visitor to:
 - (1) Operate any boat, canoe, kayak or other watercraft upon any water, lagoon, lake, pond or wetland within a park except at designated locations;
 - (2) Operate any motorized watercraft upon any water, lagoon, lake, pond or wetland within the city.
- (D) *Camping.* It is unlawful for any park visitor to camp in a park except by permit pursuant to § 93.07.
- (E) *Fishing.* It is unlawful for any park visitor to fish in a park in violation of any provision of Minn. Stat. Chapter 101, as it may be amended from time to time.
- (F) *Horseback riding.* It is unlawful to ride a horse or other animal within any park without first obtaining a permit pursuant to § 93.07, or as part of an organized community event.
- (G) *Meetings, speeches, demonstrations and parades.* It is unlawful for any park visitor to conduct public meetings, assemblies, entertainment activities, parades or demonstrations within a park without first obtaining a permit pursuant to § 93.07.
- (H) *Sell, solicit or carry on any business or commercial enterprise or service.* It is unlawful to sell, solicit or carry on any business or commercial enterprise or service in a park without first obtaining the appropriate license or permit from the City Council pursuant to §§ 32.15 through 32.20.
- (I) *Special use.* No park visitor or group may have special use of any portion or all of a park unless the visitor or group has first reserved the property with the Parks and Recreation Department and obtained a permit pursuant to § 93.07. Unless a special use permit is procured and a reservation is made, use of park property will be on a first come first served basis.
- (J) *Swimming.* It is unlawful for any park visitor to wade or swim within a park or use any mattresses, inner tubes or other inflatable devices. No person, except employees of the city in the performance of their duties, may be within the enclosed area of the municipal pool after the pool has been closed for use.

(K) *Use of loudspeaker.* It is unlawful for any park visitor to use any loudspeaker or other amplifying system or device without first obtaining a permit pursuant to § 93.07.

(2001 Code, § 825.11)

§ 93.07 PERMIT PROCEDURES AND FEES.

(A) *Permit required.* It is unlawful to conduct any activity in a park for which a permit is required by this section without first obtaining a permit from the Parks and Recreation Director, pursuant to this section.

(B) *Activities for which a permit is required.* In addition to the activities stated in this section, the following activities, when conducted in a park, require a permit:

(1) Carnivals, circuses, community celebrations, public meetings, assemblies, parades and demonstrations, regardless of the number of participants;

(2) A gathering of 50 or more park visitors, including picnics or political gatherings;

(3) Contests or exhibitions, including, among other uses or events, those requesting exclusive use or charging admission, regardless of the number of participants;

(4) Bringing kegs or barrels of intoxicating or 3.2% malt liquors into a park. Applicants must first obtain the appropriate license from the City Council pursuant to §§ 112.01 through 112.07;

(5) Bringing intoxicating liquor other than beer into a park. Applicants must first obtain the appropriate license from the City Council pursuant to §§ 112.01 through 112.07;

(6) Bringing intoxicating liquors or 3.2% malt liquors into the ice arena or golf course. Applicants must first obtain the appropriate license from the City Council pursuant to §§ 112.01 through 112.07; and

(7) Being in or using a park during hours when the park is closed.

(C) *Granting of permits.* The Parks and Recreation Director or the City Manager will issue a permit upon payment of the fee and upon finding that:

(1) The proposed activity or use of the park will not unreasonably interfere with or detract from the enjoyment of the park by other park visitors, or disturb residentially zoned properties and park visitors in proximity to the park;

(2) For special use permits, the proposed activity or use of the park will not unreasonably interfere with or detract from the promotion of public health, welfare, safety, comfort and recreation;

(3) The proposed activity or use is not reasonably anticipated to entice violence, crime or disorderly conduct;

(4) The proposed activity will not entail an unusual, extraordinary burden or expense for the city; and

(5) The facilities desired have not been reserved for some other use on the day and hour requested in the application.

(D) *Denial of permits.* Within five days after receiving a completed application, the Parks and Recreation Director shall notify an applicant in writing that the application is denied, and state the reasons for denying the permit. Any aggrieved applicant may appeal in writing to the City Manager within five days of mailed notice of the denial. The City Manager will consider the application under the standards set forth in division (C) above, and sustain or overrule the decision of the Parks and Recreation Director within 14 days.

(E) *Conditions of permit.* A permit holder is bound by all parks rules and regulations and all applicable ordinances as if they were fully inserted in the permit. The city may impose any reasonable conditions on a permit that in its discretion will protect the public health, safety, welfare, comfort and recreation in the park. The permit holder is liable for any loss, damage or injury sustained by any park visitor when due to the negligence of the permit holder. Within 24 hours after the expiration of the permit, a permit holder must remove from the park all trash, boxes, papers, cans, garbage and other refuse, and all installations and equipment, and must restore the premises to its condition prior to the permit holder's use of the park.

(F) *Non-transferable.* A permit under this section may not be transferred to any other person.

(G) *Designated areas specified in permit.* The use for which the permit is granted must only be conducted within the area designated on the permit.

(H) *Production of permit.* Any person claiming to have a permit must produce it for inspection, upon request of any city employee.

(I) *Revocation.* The city has the authority to revoke a permit upon finding a violation of any rule or ordinance, condition imposed on the permit, or upon good cause.

(2001 Code, § 825.13)

§ 93.08 DOMESTIC ANIMALS.

The following rules and regulations govern the presence of domestic animals in a park.

(A) *Lawful.* It is lawful for any park visitor to bring a domestic animal into a park if:

- (1) The domestic animal is properly licensed;
- (2) The domestic animal is restrained on an adequate leash no longer than six feet;
- (3) The domestic animal is a dangerous dog and is properly restrained, pursuant to Chapter 90;

(4) Park visitors who bring domestic animals into a park have tools or equipment in their possession that are suitable for the removal of animal fecal material and promptly and effectively remove from the ground or surface of any park and any park facilities all fecal material deposited by the domestic animal under their control or care. Park visitors removing animal wastes from park surfaces shall dispose of it in a sanitary manner, which may include depositing it in any designated waste receptacle located in the park;

- (5) The domestic animal does not disturb, harass or interfere with any park visitor or any park visitor's property;
- (6) The domestic animal is necessary to assist physically or mentally challenged persons; or
- (7) The domestic animal is a police enforcement animal.

(B) *Liability.* The domestic animal owner who brings the animal to the park is liable for any action taken or damage caused by the animal.

(C) *Prohibition in certain parks.* Except under divisions (A)(6) and (A)(7) above, no domestic animals are permitted within any park building, on any skating rinks, golf courses, swimming pools or athletic fields in the sports complex.

(D) *Right to prohibit certain animals.* The Parks and Recreation Director may prohibit any domestic animal and its owner from a park for violating the rules and regulations of this section or state law.

(2001 Code, § 825.15)

§ 93.09 VEHICLES.

(A) City code provisions and state law provisions relating to the operation of vehicles upon streets and highways apply within all parks and upon all park property.

(B) In addition, Minn. Stat. Chapter 169, as it may be amended from time to time, is specifically adopted by reference except those provisions that by their nature have no application. With the exception of city employees in the performance of their duties, it is unlawful for any park visitor to:

- (1) Operate any vehicle, including a motorized recreational vehicle, within a park, except upon designated roadways and parking areas;
- (2) Operate a vehicle in a park in excess of posted speed limits;
- (3) Park or leave a vehicle standing within a park except at a designated parking area during park hours;
- (4) Operate a vehicle that emits excessive or unusual noise, noxious fumes, dense smoke or other polluting matter;
- (5) Operate a vehicle in a reckless or careless manner in a park; and

- (6) Wash, polish, grease, change oil or repair any vehicle in a park.

(2001 Code, § 825.17)

§ 93.10 USE OF ALCOHOL WITHIN A PARK FACILITY.

Intoxicating liquors and 3.2% malt liquor may only be consumed and displayed in a park under the following provisions.

(A) *Intoxicating liquors.* Park visitors may not possess or bring into a park any intoxicating liquor, except beer in cans or plastic bottles, without first having obtained a permit pursuant to § 93.07.

(B) *Roadways and parking lots.* No park visitor may display or consume intoxicating or 3.2% malt liquor on or within any roadway, parking area or parking lot within a park.

(C) *Prohibited areas.* No park visitor may possess, display or consume intoxicating liquors or 3.2% malt liquors in areas being used for scheduled youth sports or within areas the city has designated that the possession, display or consumption is prohibited. Prohibited areas include, but are not limited to, the swimming pool, warming houses, within 20 feet of playground equipment, athletic fields and dugouts.

(D) *Quantities.* No park visitor may bring into a park intoxicating liquors or 3.2% malt liquor in kegs or barrels without a permit, pursuant to § 93.07.

(E) *Adoption by reference.* Minn. Stat. Chapter 340A, as it may be amended from time to time, is adopted by reference, except those provisions that by their nature have no application.

(2001 Code, § 825.19)

§ 93.11 PROTECTION OF PROPERTY, STRUCTURES AND NATURAL RESOURCES.

(A) *Damaging or removing property prohibited.* No park visitor may willfully deface, vandalize or otherwise cause the destruction of park property.

(B) *Flowers, trees and shrubs.* No park visitor may willfully or without authority cut, pluck or otherwise remove or injure any flowers, shrubs, trees or other plant material growing in or around any park. No park visitor may introduce any form of vegetation within a park or public land without written permission from the Parks and Recreation Director.

(C) *Birds or animals.* No park visitor may willfully or without authority kill, trap, hunt, pursue or in any manner disturb or interfere with any species of wildlife in any park. No park visitor may release any insect, fish or animal within a park or public land without written permission from the Parks and Recreation Director.

(D) *Fires.* No park visitor may ignite a fire in any park, except in receptacles provided by the city for those purposes. The igniting of fires may be further limited or prohibited by park rules. No park visitor igniting or attending a fire may leave the area before the fire has been completely extinguished.

(E) *Excavations.* No park visitor may dig trenches or make other excavations within a park.

(F) *Maintaining parks.* No person except employees of the city in performance of their duties may mow, fertilize or maintain any portion of park property without the written permission of the Parks and Recreation Director.

(2001 Code, § 825.21)

§ 93.12 LIABILITY.

The city is not liable for any loss, damage or injury sustained by a park visitor. All persons using a park do so at their own risk.

(2001 Code, § 825.23)

§ 93.13 RESTITUTION AND ENFORCEMENT.

- (A) *Restitution.* In addition to any other penalties provided by this section, any park visitor violating the provisions of this section must make restitution to the city for the full value of the damage caused, including, but not limited to, the cost of repairs, replacement and any fees the city may have incurred, including legal fees, in enforcing the provisions of this section.
- (B) *Enforcement.* The Police Department and Department of Parks and Recreation employees may diligently enforce the provisions of this section and eject park visitors acting in violation of this section from any park. In addition, the City Manager may declare any park facility or portion closed to the public at any time and for any interval of time or for certain uses, as the City Manager may find reasonably necessary to preserve the health, safety and welfare of a park visitor or the park facility.
- (2001 Code, § 825.25)

CHAPTER 94: PUBLIC NUISANCES

Section

General Provisions

94.01 Assessable current services

Nuisances

- 94.15 Public nuisance
- 94.16 Public nuisances affecting health
- 94.17 Public nuisances affecting morals and decency
- 94.18 Unsheltered storage of junk and inoperable or abandoned motor vehicles
- 94.19 Building maintenance and appearance
- 94.20 Recovery of cost

Weeds

- 94.35 Short title
- 94.36 Jurisdiction
- 94.37 Definitions; exclusions
- 94.38 Owners responsible for trimming, removal and the like

GENERAL PROVISIONS

§ 94.01 ASSESSABLE CURRENT SERVICES.

- (A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.
- CURRENT SERVICE.** One or more of the following: snow, ice or rubbish removal from sidewalks; weed elimination from street grass plots adjacent to sidewalks or from private property; removal or elimination of public health or safety hazards from private property, excluding any hazardous building included in Minn. Stat. §§ 463.15 through 463.26, as they may amended from time to time; installation or repair of water service lines; street sprinkling, street flushing, light street oiling or other dust treatment of streets; repair of sidewalks and alleys; trimming and care of trees and removal of unsound and insect-infected trees from the public streets or private property; and the operation of a street lighting system.
- (B) *Snow, ice, dirt and rubbish.*

(1) *Duty of owners and occupants.* The owner and the occupant of any property adjacent to a public sidewalk shall use diligence to keep the walk safe for pedestrians. No owner or occupant shall allow snow, ice, dirt or rubbish to remain on the walk longer than 24 hours after its deposit thereon. Failure to comply with this section shall constitute a violation.

(2) *Removal by city.* The City Clerk or other person designated by the City Council may cause removal from all public sidewalks all snow, ice, dirt and rubbish as soon as possible beginning 24 hours after any matter has been deposited thereon or after the snow has ceased to fall. The City Clerk or other designated person shall keep a record showing the cost of removal adjacent to each separate lot and parcel.

(C) *Public health and safety hazards.* When the city removes or eliminates public health or safety hazards from private property under the following provisions of this chapter, the administrative officer responsible for doing the work shall keep a record of the cost of the removal or elimination against each parcel of property affected and annually deliver that information to the City Clerk.

(D) *Installation and repair of water service lines.* Whenever the city installs or repairs water service lines serving private property under Chapter 52 of this code, the City Clerk shall keep a record of the total cost of the installation or repair against the property.

(E) *Repair of sidewalks and alleys.*

(1) *Duty of owner.* The owner of any property within the city abutting a public sidewalk or alley shall keep the sidewalk or alley in repair and safe for pedestrians. Repairs shall be made in accordance with the standard specifications approved by the City Council and on file in the office of the City Clerk.

(2) *Inspections; notice.* The City Council or its designee may make inspections as are necessary to determine that public sidewalks and alleys within the city are kept in repair and safe for pedestrians or vehicles. If it is found that any sidewalk or alley abutting on private property is unsafe and in need of repairs, the City Council may cause a notice to be served, by registered or certified mail or by personal service, upon the record owner of the property, ordering the owner to have the sidewalk or alley repaired and made safe within 30 days and stating that if the owner fails to do so, the city will do so and that the expense thereof must be paid by the owner, and if unpaid it will be made a special assessment against the property concerned.

(3) *Repair by city.* If the sidewalk or alley is not repaired within 30 days after receipt of the notice, the City Clerk may report the facts to the City Council, and the City Council may by resolution order the work done by contract in accordance with law. No person shall enter private property to repair a sidewalk, except with the permission of the owner or after obtaining an administrative warrant. The City Clerk shall keep a record of the total cost of the repair attributable to each lot or parcel of property.

(F) *Personal liability.* The owner of property on which or adjacent to which a current service has been performed shall be personally liable for the cost of the service. As soon as the service has been completed and the cost determined, the City Clerk, or other designated official, shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable at the office of the City Clerk. If the bill remains unpaid, after notice and hearing as provided in Minn. Stat. § 429.061, as it may be amended from time to time, the City Clerk may list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which the charges are attributable. The City Council may then certify the charges against the property under that statute and other pertinent statutes to the County Auditor for collection along with current taxes the following year or in annual installments as the City Council may determine in each case.

(G) *Damage to public property.* Any person driving any vehicle, equipment, object or contrivance upon any street, road, highway or structure shall be liable for all damages which the surface or structure thereof may sustain as a result of any illegal operation, or driving or moving of the vehicle, equipment or object or contrivance; or as a result of operating, driving or moving any vehicle, equipment, object or contrivance weighing in excess of the maximum weight permitted by statute or this code. When the driver is not the owner of the vehicle, equipment, object or contrivance, but is operating, driving or moving it with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any such damage. Any person who willfully acts or fails to exercise due care and by that act damages any public property shall be liable for the amount thereof, which amount shall be collectable by action or as a lien under Minn. Stat. § 514.67, as it may be amended from time to time.

(H) *Assessment.* On or before October 31 of each year, the City Clerk shall list the total unpaid charges for each type of current service and charges under this section against each separate lot or parcel to which they are attributable under this section. The City Council may then spread the charges against property benefitted as a special assessment under the authority of Minn. Stat. § 429.101, as it may be amended from time to time, and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the City Council may determine in each case.

§ 94.15 PUBLIC NUISANCE.

(A) *Definitions.* For purposes of this section, the terms defined have the following meanings.

ABATEMENT. Includes, but is not limited to the removal, stoppage, extermination, eradication, cleaning, cutting, mowing, grading, repairing, draining, securing, barricading, fencing, demolishing or destroying that which causes or constitutes a nuisance.

ANNOYANCES. Any condition that unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public.

COMPLIANCE DEADLINE. Either 48 hours after the notice is received or posted or such other date by which the nuisance must be removed, as specified in the notice.

EMERGENCY ABATEMENT. The abatement of the nuisance by the city, or a contractor employed by the city, by removal, repair or other acts without notice to the owner, agent or occupant of the property except for the notice required by this code.

ENFORCEMENT OFFICER. Any employee or agent enumerated in City Code § 10.17 or any duly authorized representative thereof.

JUNK. That which is defined in § 94.18.

OBSTRUCTIONS. Objects or conditions that interfere with, endanger or prevent the ordinary or safe use of any property.

OWNER. Any person shown to be the property owner of record.

PROPERTY. Any real property, premises, structure or location on which a public nuisance is alleged to exist.

PUBLIC NUISANCE or **NUISANCE.** Any substance, matter, emission or thing that creates a dangerous or unhealthy condition or that threatens the public peace, health, safety or sanitary condition of the city or that is offensive or has a blighting influence on the community and is found upon, in, being discharged or flowing from or onto any street, alley, highway, vehicle, water, excavation, building, erection, lot, grounds or other property located within the city.

RESPONSIBLE PARTY. Any one or more of the following:

- (a) Agent;
- (b) Contract for deed holder;
- (c) Mortgagee or vendee in possession;
- (d) Lessee; or
- (e) Other person, firm or corporation exercising apparent control over a property.

(B) *Public nuisance.* Public nuisance includes, but not limited to, the following:

- (1) Violation of City Code §§ 150.020 through 150.023 (International Property Maintenance Code);
- (2) Violations of City Code §§ 150.105 through 150.110 (signs);
- (3) Violations of City Code Chapter 92 (general health provisions);
- (4) Violations of City Code §§ 150.060 through 150.073 (vacant and hazardous building or property), except any structural violations under Minn. Stat. §§ 463.15 and 463.26, as they may be amended from time to time;
- (5) Violations of City Code § 94.18 (Unsheltered Storage of Junk and Inoperable or Abandoned Motor Vehicles);
- (6) Violations of City Code Chapter 94;
- (7) Violations of City Code Chapter 132 (Graffiti);
- (8) Firewood stored either in excess of 200 cubic feet or firewood stored in excess of six feet in height;

- (9) Grass or weeds that have grown to a height of eight or more inches or that have, or are about to go to seed;
- (10) Obstructions, which include, but are not limited to:
 - (a) Snow and ice not removed from public sidewalks within 24 hours after its accumulation.
 - (b) Rain, ice or snow or wastewater falling or flowing from private property or buildings onto public property, except gutters, drainage ways and storm sewers.
 - (c) Use of public street or sidewalk or use of property abutting a public street or sidewalk that causes large crowds of people to gather, obstructing traffic, streets or sidewalks, except in accordance with the regulations of the city.
 - (d) Signs, awnings, vegetation or other objects located on private property that are not constructed and maintained as required by law that prevent persons from having a clear view of all traffic approaching an intersection, or that overhang and obstruct public property.
 - (e) Digging, excavating or doing any act that alters or effects the drainage of property or alters or effects flows of the public storm sewer and drainage ditch system, except in accordance with the regulations of the city.
 - (f) Depositing snow onto a neighbor's property or into the right-of-way.
- (11) Annoyances, which include, but are not limited to noises, odors, vibrations or emissions of smoke, fumes, gas, soot, cinders or ash;
- (12) Engaging in any business, activity or conduct that is dangerous, hurtful, unwholesome, offensive or unhealthy to the neighborhood, or which constitutes an annoyance to the persons in the neighborhood, or is detrimental to the property in the neighborhood or to the general public;
- (13) Permitting, suffering, maintaining or failing to remove any offensive, nauseous, hurtful, dangerous or unhealthy condition resulting from a failure to properly dispose of garbage, sewage, waste, debris or any other unwholesome or offensive substance, liquid, or thing upon one's premises, or dropping, discharging, passing, depositing or otherwise delivering the same upon the premises of another or public property;
- (14) Constructing, maintaining, permitting or suffering upon one's property any billboard, sign, poster or advertisement, or to post, publish, promulgate, broadcast, display, issue or circulate any insulting, profane or abusive emblem, sign or device, or blasphemous written or printed statement, calculated or such as is likely to cause a breach of the peace;
- (15) Displaying, circulating, issuing, posting or publishing any slanderous or obscene, immoral or lewd pictures, posters, literature, writings, drawings or oral statements;
- (16) Any fence, wall, shed, deck, house, garage, building, structure, tree, pole, smokestack, excavation, hole, pit, basement, cellar, sidewalk, dock, lot, land, yard, premises or location which by reason of the condition in which it is found or permitted to be or remain, does or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the city
- (17) Any other activity, place or thing that is defined in this code as a nuisance or public nuisance or any other violations of the city code or zoning ordinance that are a danger to the health, safety and general welfare of the citizens of the city.

(C) *Exceptions.* Activities undertaken by the Economic Development Authority or the City Council under the Quality Housing Program or any other bona-fide redevelopment initiative are not subject to the requirements of this section.

(D) *Violations.*

- (1) No person shall, directly or indirectly or by omission, create a nuisance.
- (2) No responsible party shall allow a nuisance to remain upon or in any property, structure or vehicle under that person's control.

(E) *Emergency abatement.* Whenever the city is made aware of the existence of a public nuisance, the city will cause to be inspected the property on which it is alleged that such a public nuisance exists. Should the Enforcement Officer determine that a public nuisance exists and that the public health, safety or welfare may be in immediate danger, then emergency abatement procedures will be implemented and the city may cause the nuisance to be removed or abated. When emergency abatement is authorized, notice to the owner, agent or occupant of the property is not required. Following emergency abatement, the city will post a notice on the property describing the action taken to abate the nuisance.

(F) *Abatement; notice.*

(1) *General rule.* If, after inspecting the property, the Enforcement Officer declares the existence of a public nuisance but the nature of the nuisance is not such as to require emergency abatement of the nuisance, then regular abatement procedures will be followed.

(2) *Notice.*

(a) In cases where emergency abatement of a public nuisance is not required, the Enforcement Officer will serve a notice on the owner or responsible party, by regular mail, or by personal service, ordering the owner or responsible party to remove the public nuisance. The notice will contain the following information:

1. Description of the property upon which the nuisance is situated;
2. The nature of the nuisance to be abated;
3. State that in the event the owner or responsible party does not comply with the notice, the necessary work may be performed by the city;
4. State that if the owner or responsible party does not pay for the expense, the cost of the work will be assessed against the property; and
5. A compliance deadline. The notice will require that the public nuisance must be removed within 48 hours after the date of receipt of the notice unless another compliance deadline is stated.

(b) If the owner of the property or responsible party cannot be found, the notice will be posted on the property for a period of 48 hours, after which period the city may perform any necessary work. Notice by regular mail and notice by posting may be done simultaneously.

(G) *Disclosure of responsible party.*

(1) Upon the request of the Enforcement Officer, an owner or responsible party shall disclose the name of any other owner or responsible party known. This shall include the person for whom he or she is acting, from whom he or she is leasing the property, to whom he or she is leasing the property, or with whom he or she has any conveyancing contract.

(2) An owner or responsible party shall, upon the request of the Enforcement Officer, provide the Officer with access to all interior portions of any occupied or unoccupied building in order to permit the Officer to make a complete inspection.

(H) *Authority to abate.*

(1) The Enforcement Officer is authorized to enter in or upon any property or structure for the purpose of enforcing and assuring compliance with the provisions of this section.

(2) If the public nuisance has not been removed by the compliance deadline, the city has the authority to enter upon the property and abate the public nuisance. In abating the nuisance, the city may go to whatever extent necessary to complete the abatement of the public nuisance. The city may call upon any of the city departments or divisions for whatever assistance is deemed necessary or may by private contract cause the abatement of the public nuisance. If any material derived from the abatement is salvageable, and no notice of appeal is received by the city pursuant to division (J) below, the city may sell the salvaged material at private or public sale with the proceeds from the sale going to the city's community development.

(I) *Invoice.* If the city performs the work pursuant to division (H) above, the city will maintain a record showing the cost of the work attributable to each separate lot and parcel, including administrative costs. Abatement costs shall include, but are not limited to, the cost of the abatement, the cost of investigation, such as title searches, inspection and testing, the cost of notification, filing costs and administrative costs, including an overhead charge of up to 25% for administrative costs.

(J) *Appeals.* An owner or responsible party may appeal by following the procedures set forth in City Code § 10.98. Any personal property of value or salvageable property coming into possession of the city during the course of the abatement pursuant to division (H)(2) above will be stored by the city pending the outcome of the appeal.

§ 94.16 PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

- (A) Exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within 24 hours after death;
- (E) Accumulations of manure, refuse or other debris;
- (F) Privy vaults and garbage cans which are not rodent-free or fly-tight or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances;
- (H) All noxious weeds and other rank growths of vegetation upon public or private property;
- (I) Dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;
- (J) All public exposure of people having a contagious disease;
- (K) Any offensive trade or business as defined by statute not operating under local license; and
- (L) All unnecessary and annoying vibrations.

§ 94.17 PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

- (A) All gambling devices, slot machines and punch boards, except as otherwise authorized by federal, state or local law;
- (B) Betting, bookmaking and all apparatus used in those occupations;
- (C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame and bawdy houses;
- (D) All places where intoxicating liquor is manufactured or disposed of in violation of law or where, in violation of law, people are permitted to resort for the purpose of drinking intoxicating liquor, or where intoxicating liquor is kept for sale or other disposition in violation of law, and all liquor and other property used for maintaining that place. For the purposes of this section, **INTOXICATING LIQUOR** shall mean any ethyl alcohol, distilled, fermented, spirituous, vinous or malt beverage containing more than 0.5% alcohol by volume; and
- (E) Any vehicle used for the unlawful transportation of intoxicating liquor, or for promiscuous sexual intercourse, or any other immoral or illegal purpose.

§ 94.18 UNSHELTERED STORAGE OF JUNK AND INOPERABLE OR ABANDONED MOTOR VEHICLES.

(A) General.

(1) *Purpose.* The purpose of this section is to declare the unsheltered storage of inoperable, abandoned or junked automobiles and any other vehicles, machinery, implements, equipment, junk or personal property of any kind which is no longer used for the purposes for which it was manufactured or made to be a danger to the public health and safety. The use of tarps shall not be considered an acceptable form of shelter.

(2) *Declaration.* The unsheltered storage of these property items throughout the city tend to impede traffic in the streets, interfere with the enjoyment of and reduce the value of public and private property, invite plundering, create fire hazards and other safety and health hazards to children as well as adults, interfere with the comfort and well-being of the public, and create, extend and aggravate urban blight. The Council declares that, in order to protect the public health, safety and welfare from such conditions, these conditions must be regulated, abated and prohibited.

(B) Prohibition of unsheltered storage.

(1) *General rule.* No person may place, permit, store, allow, maintain or leave machinery, implements, equipment, junk or personal property of any kind, which is no longer used for purposes for which it was manufactured or made, upon an open space area of any premises located anywhere in the city.

(2) *Definition.* For purposes of this section, **JUNK** means worn out or discarded material that is no longer used for the purposes for which it was manufactured or made, including but not limited to, household appliances or parts, tools, building materials, tin cans, glass, furniture, mattresses, box springs, crates, cardboard, tires or any other unsightly debris, brush or materials, the accumulation of which may have an adverse effect upon the neighborhood or property values, health, safety or general welfare of the public.

(3) *Public nuisance.* A person who creates, maintains, permits or allows a condition on property in violation of this section will be deemed to have created a public nuisance subject to abatement as provided in City Code § 94.15 and other penalties described in this code.

(C) *Prohibition of inoperable or abandoned vehicle.*

(1) No person may place, park, permit to remain, store or leave upon an open space area of any premises located anywhere in the city any inoperable or abandoned vehicle for more than seven days.

(2) *Exceptions.*

(a) In a residential zoned district, inoperable or abandoned vehicles may not be placed, parked, permitted to remain, stored or left for more than seven days unless the vehicle is kept entirely within an enclosed building.

(b) In a business or industrial zoned district, inoperable or abandoned vehicles may not be placed, parked, permitted to remain, stored or left for more than seven days unless adequately screened, or three days on a business or industrial property that is not an auto repair establishment. Adequate screening will require the keeping of the vehicles within a building, tight fence at least five feet in height, or within an earth-toned or neutral colored opaque cover that was specifically designed and manufactured for that purpose and which completely encloses such vehicle. Any inoperable or abandoned vehicle legally kept in a business or industrial zoning district for more than seven days must be at least 100 feet from a public highway or residential building.

(3) *Definition.* For purpose of this section, an **INOPERABLE OR ABANDONED VEHICLE** has the following meaning:

- (a) A vehicle that does not have valid current vehicle license and registration;
- (b) A vehicle that lacks essential parts that would render it operable; or
- (c) A vehicle that is in a rusted, wrecked, extensively damaged, partially dismantled or junked condition.

(4) *Notice.* If a vehicle fails to meet any of the above requirements, the owner or possessor of the vehicle will be responsible to remove the vehicle to a duly licensed junkyard or other authorized place of deposit or storage within ten business days of receipt of a written demand by the city. In the event the owner or possessor of the vehicle cannot be located, then it will be the responsibility of the owner of the premises to remove the vehicle to a duly licensed junkyard or other authorized place of deposit or storage within ten working days of receipt of the written demand by the city.

(5) *Impoundment of vehicles.* The city may take into custody and impound any vehicle or vehicles in violation of this section, following the expiration of the notice.

(6) *Disposition of impounded vehicles.* In all cases of impoundment described above, the city will serve a notice on the owner of the property, by registered or certified mail or by personal service, informing the owner of the right to reclaim the vehicles within 15 days of the date of the notice, and stating that in the event the owner does not reclaim the vehicle, the city may dispose or sell the vehicle. The owner or lienholder may reclaim the vehicle upon payment of all towing, storage and administrative costs by the city. If the vehicle is not reclaimed, it may be disposed of at auction or sale. The city will be reimbursed for towing, storing and administrative costs from the proceeds of the sale. Any remainder must be held for 90 days and then will be deposited in the city's General Fund.

§ 94.19 BUILDING MAINTENANCE AND APPEARANCE.

(A) *Declaration of nuisance.* Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they: are unsightly; decrease adjoining landowners and occupants' enjoyment of their property and neighborhood; and adversely affect property values and neighborhood patterns.

(B) *Standards.* A building, fence or other structure is a public nuisance if it does not comply with the following requirements:

(1) No part of any exterior surface may have deterioration, holes, breaks, gaps, loose or rotting boards or timbers.

(2) Every exterior surface that has had a surface finish such as paint applied must be maintained to avoid noticeable deterioration of the finish. No wall or other exterior surface may have peeling, cracked, chipped or otherwise deteriorated surface finish on more than 20% of:

(a) Any one wall or other flat surface; or

(b) All door and window moldings, eaves, gutters and similar projections on any one side or surface.

(3) No glass, including windows and exterior light fixtures, may be broken or cracked, and no screens may be torn or separated from moldings.

(4) Exterior doors and shutters must be hung properly and have an operable mechanism to keep them securely shut or in place.

(5) Cornices, moldings, lintels, sills, bay or dormer windows and similar projections must be kept in good repair and free from cracks and defects that make them hazardous or unsightly.

(6) Roof surfaces must be tight and have no defects that admit water. All roof drainage systems must be secured and hung properly.

(7) Chimneys, antennae, air vents and other similar projections must be structurally sound and in good repair. These projections must be secured properly, where applicable, to an exterior wall or exterior roof.

(8) Foundations must be structurally sound and in good repair.

§ 94.20 RECOVERY OF COST.

(A) *Personal liability.* The owner of premises on which a nuisance has been abated by the city or a person who has caused a public nuisance on a property not owned by that person shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

(B) *Assessment.* After notice and hearing as provided in Minn. Stat. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the City Clerk shall list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101, as it may be amended from time to time, against each separate lot or parcel to which the charges are attributable.

(C) *Overhead charge; civil penalties.* When the city has abated a public nuisance maintained by any owner of real property, an additional civil penalty of up to 50% of the cost of abatement will be added to the amount of expenses and charged to the owner for each subsequent nuisance that is abated by the city within two consecutive calendar years concerning real property owned by the same person. The civil penalty will be imposed without regard to whether the nuisances abated by the city involved the same real property or are of the same character.

WEEDS

§ 94.35 SHORT TITLE.

This subchapter shall be cited as the "Weed Ordinance."

§ 94.36 JURISDICTION.

This subchapter shall be in addition to any state statute or regulation or county ordinance presently in effect, subsequently added, amended or repealed.

§ 94.37 DEFINITIONS; EXCLUSIONS.

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

DESTRUCTION ORDER. The notice served by the City Council or designated city official, in cases of appeal, on the property owner of the ordinance violation that shall conform to Minn. Stat. § 18.83, Subd. 2, as it may be amended from time to time.

MEADOW VEGETATION. Grasses and flowering broad-leaf plants that are native to, or adapted to, the state, and that are commonly found in meadow and prairie plant communities, except weeds as defined herein.

PROPERTY OWNER. The person occupying the property, the holder of legal title or a person having control over the property of another, such as a right-of-way, easement, license or lease.

WEEDS, GRASSES and RANK VEGETATION. Includes, but is not limited to, the following:

(a) Noxious weeds and rank vegetation shall include, but not be limited to: alum (allium), Buckthorn, Bur Cucumber, Canada Thistle, Corncockle, Cressleaf Groundsel, Curly Dock, Dodder, Field Bindweed, French Weed, Hairy Whitetop, Hedge Bindweed, Hoary Cress, Horsenettle, Johnsongrass, Leafy Spurge, Mile-A-Minute Weed, Musk Thistle, Oxeye Daisy, Perennial Sowthistle, Poison Hemlock, Purple Loosestrife, Quackgrass, Russian Knapweed, Russian Thistle, Serrated Tussock, Shatter Cane, Sorghum, Wild Carrot, Wild Garlic, Wild Mustard, Wild Onion, Wild Parsnip;

(b) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated or otherwise maintained for two consecutive years;

(c) Bushes of the species of tall, common or European barberry, further known as *berberis vulgaris* or its horticultural varieties;

(d) Any weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants, growing to a height exceeding 12 inches;

(e) Rank vegetation includes the uncontrolled, uncultivated growth of annuals and perennial plants;

(f) The term **WEEDS** does not include shrubs, trees, cultivated plants or crops.

(g) Any other weed designated by Minn. Stat. § 18.77(8), as it may be amended from time to time, as noxious.

(B) In no event shall cultivated plants or crops include plants which have been defined by state statute or administrative rule as being noxious or detrimental plants.

§ 94.38 OWNERS RESPONSIBLE FOR TRIMMING, REMOVAL AND THE LIKE.

(A) All property owners shall be responsible for the removal, cutting or disposal and elimination of weeds, grasses and rank vegetation or other uncontrolled plant growth on their property, which at the time of notice, is in excess of 12 inches in height.

(B) These provisions shall not apply to an area established with meadow vegetation if:

(1) The prior vegetation is eliminated and the meadow vegetation is planted through transplanting or seed by human or mechanical means; and

(2) A sign is posted on the property in a location likely to be seen by the public, advising that a meadow or prairie is being established. This sign must be no smaller than ten inches square, no larger than one square foot, and no higher than three feet tall.

(C) *Violations.* A person who creates, maintains, permits or allows a condition on property in violation of this section will be deemed to have created a public nuisance subject to abatement as provided in City Code Chapter 94.

CHAPTER 95: STREETS AND SIDEWALKS

Lot and Sidewalk Maintenance

- 95.01 Weeds
- 95.02 Dirt and rubbish
- 95.03 Repairs to sidewalks
- 95.04 Ice and snow removal

Public Rights-of-Way

- 95.15 Findings, purpose, and intent
- 95.16 Election to manage the public rights-of-way
- 95.17 Definitions
- 95.18 Franchises/leases
- 95.19 Administration
- 95.20 Registration requirement
- 95.21 Registration information
- 95.22 Permit required
- 95.23 Permit applications
- 95.24 Issuance of permit; conditions
- 95.25 Permit fees
- 95.26 Right-of-way patching and restoration
- 95.27 Other obligations
- 95.28 Denial of permit
- 95.29 Installation requirements
- 95.30 Inspection
- 95.31 Work done without a permit
- 95.32 Revocation of permits
- 95.33 Installation of underground facilities
- 95.34 Mapping data
- 95.35 General public right-of-way regulations
- 95.36 Undergrounding
- 95.37 Right-of-way vacation
- 95.38 Indemnification and liability
- 95.39 Abandoned and unuseable facilities
- 95.40 Insurance
- 95.41 Appeal

Vacations

- 95.55 Vacating public lands, streets and alleys

§ 95.01 WEEDS.

(A) *General rule.* The owner and occupant of any property are responsible for the maintenance of the grass and grounds of the property. Any weeds, whether noxious or not, growing upon any lot or parcel of land outside the traveled portion of a street or alley, which are greater than eight inches or which have gone or are about to go to seed, are public nuisances.

(B) *Notice.* The Weed Inspector will serve notice upon the owner and occupant ordering that the weeds be cut and removed within 48 hours. Notice must be served pursuant to Chapter 94.

(C) *Removal and assessment.* Following service of the notice, if the owner or occupant fails to comply, the city may remove the nuisance and assess the costs against the current occupant, pursuant to Chapter 94.

(2001 Code, § 810.01)

§ 95.02 DIRT AND RUBBISH.

(A) *General rule.* The owner and occupant of any property adjacent to a public walk must use due diligence to keep the walk free from obstacles and safe for pedestrians. No owner or occupant may allow dirt or rubbish to remain on the walk longer than 12 hours after its deposit. For purposes of this section, **DIRT** shall mean a foul or filthy substance, such as, but not limited to mud, grime, dust, soil or excrement. **RUBBISH** shall mean worthless, unwanted material that is rejected or thrown out, debris litter or trash. All dirt and rubbish remaining on a public walk more than 12 hours are public nuisances.

(B) *Notice.* The city will serve notice upon the owner and occupant ordering that the dirt or rubbish be removed within 24 hours. Notice must be served pursuant to Chapter 94.

(C) *Removal and assessment.* Following service of the notice, if the owner or occupant fails to comply, the city may remove the nuisance and assess the costs, pursuant to Chapter 94.

(2001 Code, § 810.03)

§ 95.03 REPAIRS TO SIDEWALKS.

(A) *General rule.* The owner and occupant of any property abutting public sidewalks must keep the sidewalk in repair and safe for pedestrians. Failure to do so is considered a public nuisance. The Public Works Director will make periodic inspections to determine that public sidewalks are kept in repair and are safe for pedestrians.

(B) *Notice.* The Public Works Director will serve notice upon the owner and occupant ordering that the sidewalk be repaired within 30 days. Notice must be served pursuant to Chapter 94. No repair may be performed until the city issues a permit for the work.

(C) *Removal and assessment.* Following service of the notice, if the owner or occupant fails to comply, the Public Works Director will notify the City Council and request that the City Council order the repair. The City Council may assess the costs pursuant to Chapter 94.

(2001 Code, § 810.05)

§ 95.04 ICE AND SNOW REMOVAL.

(A) *General rule.*

(1) *Residential.* The owner and occupant of any residential property adjacent to a public sidewalk must use due diligence to keep the entire sidewalk free from environmental hazards and safe for pedestrians. No owner or occupant may allow ice or snow to remain on the sidewalk longer than 12 hours after its deposit. Ice and snow remaining on a public sidewalk longer than 12 hours is a public nuisance.

(2) *Commercial.* The owner and occupant of any business or light industrial property adjacent to a public trail must use due

diligence to keep the trail safe for pedestrians. No owner or occupant may allow ice or snow to remain on the trail longer than 12 hours after its deposit. Ice and snow remaining on a public trail longer than 12 hours is a public nuisance.

(B) *Notice.* The city will serve notice upon the owner and occupant ordering that the ice and snow be removed within 24 hours. Notice must be served pursuant to Chapter 94.

(C) *Removal and assessment.* Following service of the notice, if the owner or occupant fails to comply, the city may remove the nuisance and assess the costs pursuant to Chapter 94.

(D) *Deposit on public street.* It is unlawful for any person to deposit or cause to be deposited snow from private property or right-of-way onto a public street.

(2001 Code, § 810.07)

PUBLIC RIGHTS-OF-WAY

§ 95.15 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. This subchapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its 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. Finally, this subchapter provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(B) (1) This subchapter shall be interpreted consistently with Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086 (the "Act"), as they may be amended from time to time, 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 through 7819.9950 where possible.

(2) To the extent any provision of this subchapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended.

(3) This subchapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

§ 95.16 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 hereby elects, pursuant to Minn. Stat. § 237.163, Subd. 2(b), as it may be amended from time to time, to manage rights-of-way within its jurisdiction and to regulate excavations and obstructions within the public rights-of-way.

§ 95.17 DEFINITIONS.

The following definitions apply in this subchapter.

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.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under Minn. Stat. § 15.73, Subd. 3, as it may be amended from time to time;

(4) Letter of credit, in a form acceptable to the city;

(5) Self-insurance, in a form acceptable to the city; and

(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 the right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minn. Rule 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 to 7819.950.

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. The Public Works Department of the city.

DIRECTOR. The Director of the Public Works Department of the city, or her or his 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 § 95.25.

FACILITY or **FACILITIES.** Any tangible asset in the right-of-way required to provide utility service.

HOLE. An excavation in the pavement, with the excavation having a length less than the width of the 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; Minn. Stat. §§ 237.162 or 237.163, as they may be amended from time to time; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 95.41 of this subchapter.

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.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 95.25.

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.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

PERMIT. The meaning given "right-of-way permit" in Minn. Stat. § 237.162, as it may be amended from time to time.

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. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A **RIGHT-OF-WAY** does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

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.

RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to state rules.

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 Minn. Stat. § 237.162, Subd. 4, as it may be amended from time to time; or
- (2) A person owning or controlling a service provided by a public utility as defined in Minn. Stat. § 216B.02, Subd. 4 and 6, as they may be amended from time to time; and who has a right under law, franchise or ordinance to use the public right-of-way.

SERVICE or UTILITY SERVICE. Means and includes:

- (1) Service provided by a public utility as defined in Minn. Stat. § 216B, Subd. 4 and 6, as they may be amended from time to time;
- (2) Services of a telecommunications right-of-way user, including the transporting of voice or data information;
- (3) Services provided by a cable communications system as defined in Minn. Stat. § 238.02, Subd. 3, as it may be amended from time to time;
- (4) Natural gas or electric energy or telecommunications services provided by a local government unit;
- (5) Services provided by a cooperative electric association organized under Minn. Stat. Chapter 308A, as it may be amended from time to time; and
- (6) Water, sewer, steam, cooling or heating services.

SERVICE LATERAL. An underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A **SERVICE LATERAL** is also an underground facility that is used in the removal of wastewater from a customer's premises.

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.

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 Minn. Stat. Chapter 238, as it may be amended from time to time, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chapters 453 and 453A, as they may be amended from time to time, or a cooperative electric association organized under Minn. Stat. Chapter 308A, as it may be amended from time to time, are not ***TELECOMMUNICATIONS RIGHT-OF-WAY USERS*** for purposes of this section.

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 two-year plan, in which case it is considered full restoration.

TRENCH. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

§ 95.18 FRANCHISES/LEASES.

In addition to the requirements of this section, the city may require a public utility or cable operator who has or seeks to have facilities located in a public right-of-way to obtain a franchise, and may require other users of the public right-of-way to obtain a lease, if allowed by state law.

§ 95.19 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.

§ 95.20 REGISTRATION REQUIREMENT.

(A) *Registration.* Each public right-of-way user must register with the city. Registration will be deemed complete upon the public right-of-way user submitting to the city a completed registration form furnished by the city and paying the registration fee. A right-of-way user is required to update its registration within 60 days after any change of the information contained in a current registration statement. Registration must be renewed annually.

(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.* Persons engaged in the following activities are not deemed to use or occupy the right-of-way, and are not governed by this section, but may be governed by other city code sections:

- (1) Installing mail boxes; or
- (2) Engaging in snow removal activities.

(D) *Gopher One Call.* Nothing in this section relieves a person from complying with the provisions of Minn. Stat. Chapter 216D, Gopher One Call Law, as it may be amended from time to time.

§ 95.21 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 registration certificate number, address and email address, if applicable, and telephone facsimile numbers;

(2) The name, address and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available 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 verifying the coverage required in Minn. Stat. § 802.28, as it may be amended from time to time; and

(4) Other information as the Director may require.

(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 the which the registrant has knowledge of any change.

(C) *Transfer of ownership or interest.* Within 30 days after a public right-of-way registrant transfers, sells or otherwise conveys ownership or interest in facilities to another person, the registered public right-of-way user must notify the city of the date of the conveyance and the name of the transferee. Within 60 days after the conveyance, a new registration fee must be paid.

§ 95.22 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.

(1) *Excavation permit.* 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, including, but not limited to, pet containment systems, irrigation systems, driveway approach, curb.

(2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of 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.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit, unless:

(1) Such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rule 7819.1000, subp. 3, and notwithstanding division (B) above, 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 set in the fee schedule.

(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.

§ 95.23 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) The applicant's name, Gopher One Call registration certificate number, the city's registration number, street address, e-mail address, telephone number and facsimile telephone number;

(C) The local representative's name, street address, e-mail address, telephone number, facsimile telephone number and current information regarding how to contact the local representative in an emergency;

(D) The name, street address and telephone number of the person(s) or entities, other than the applicant, to perform the project work or any portion of it;

(E) A certificate of insurance or self-insurance verifying the coverage required in this section;

(F) Two copies of scaled drawings, or other drawings meeting requirements established by the director, showing:

(1) The location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the applicant;

(2) The proposed location of the facility within the right-of-way and scaled dimensions of the facility from an existing physical topographic feature (such as "back of curb," "edge of bituminous road");

(3) All existing physical topographic features (trees, shrubs, culverts, driveways, fences, street signs) and all municipal utilities that lie within ten feet of the proposed facility location;

(4) The location of any public streets, alleys, sidewalks or trails that will be disrupted by the work; and

(5) The location of any public streets, alleys, sidewalks or trails that will be temporarily closed to traffic or obstructed by the work.

(G) A description of methods to be used for restoration of streets or boulevards;

(H) Payment of money due to 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 of any emergency actions taken by the city;

(4) Franchise fees or other charges, if applicable.

(I) Payment of disputed amounts due to the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing; and

(J) 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.

§ 95.24 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirement of this subchapter, the city shall issue a permit.

(B) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare of when necessary to protect the right-of-way and its current use. A permittee must comply with all conditions of the permit.

§ 95.25 PERMIT FEES.

(A) *Establishment.* Permit fees will be established to recover the city management costs and, when applicable, restoration costs. The permit fees are set in the fee schedule. No permit fee will be required for an obstruction or excavation permit issued to the city, although the city must be allocated its full portion of the city management costs in calculating the permit fees.

(B) *Payment required.* No permit will be issued unless the applicable permit fee has been paid.

(C) *Work without a permit.* Except as otherwise provided in § 95.31, a person who obstructs or excavates in the right-of-way before obtaining a permit must pay double the normal fee for the permit.

(D) *Non-refundable.* Permit fees are not refundable.

(E) *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.

§ 95.26 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 § 95.27(D).

(B) *Patch and restoration.* Permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.

(3) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

(C) *Standards.* All restoration must be in accordance with the written standards and materials specified by the city, which must comply with state standards. Subject to state rules, the city may prescribe additional restoration procedures and standards on a case-by-case basis based on the following considerations:

- (1) The number, size, depth and duration of the excavation, disruption or damage to the public right-of-way;
- (2) The traffic volume carried by the public right-of-way;
- (3) The character of the neighborhood surrounding the public right-of-way;
- (4) The pre-project condition of the public right-of-way;
- (5) The remaining life expectancy of the public right-of-way due to the project;
- (6) The costs of the restoration method in relation to the prevention of an accelerated depreciation of the public right-of-way that could result due to the project work in the public right-of-way; and
- (7) The likelihood that the particular restoration method would be effective in slowing the depreciation of the public right-of-way that would otherwise occur.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the city shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five calendar days of the receipt to 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 unseasonable or unreasonable under § 95.27(D).

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the 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.

§ 95.27 OTHER OBLIGATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

- (1) Make application for a permit extension and pay any additional fees required thereby; and
- (2) Be granted a new permit or permit extension.

(B) *Limitations of dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work

before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(C) *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. 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.

(D) *Seasonally prohibited work or unreasonable conditions.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(E) *Interference with right-of-way.*

(1) A permittee or registrant must not obstruct a public right-of-way and must not hinder the natural free and clear passage of water through the gutters or other waterways, except as expressly authorized by the permit. Project operations and work must be conducted in a manner to ensure the least obstruction to and interference with present and continued use of the public right-of-way.

(2) Personal vehicles of those doing work in the public right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations.

(3) The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(F) Reasonable precautions must be taken as necessary to avoid creating unsafe or unsanitary conditions. Precautions including appropriate signage must be taken to ensure the safety of the general public, employees, invitees and those who require access to abutting property.

(G) The permittee must maintain access to all properties and cross streets during project work, including emergency vehicle access.

(H) The permittee must provide 48-hour written notice, using the standard city form, to abutting property owners before commencement of any project work that may disrupt the use of and access to the abutting property.

(I) The permittee must comply with the state's uniform traffic manual for traffic control at all times during any project work and must protect and identify excavations and work operations with barricade flags in the daylight hours and by warning lights at dusk and night.

(J) When a trail or drive has been cut, the appropriate signs must be kept in place and maintained until restoration is complete.

(K) The permittee must provide proper trench protection as required by federal and state occupational safety regulations to prevent any cave-in, injury to property or persons or enlargement of the excavation.

(L) Excavations, trenches and jacking pits off the roadway surface area or adjacent to the roadway or curbing must be sheathed and braced. When unattended, all excavations, trenches and jacking pits must be protected to prevent surface drainage from entering the excavation, trench or jacking pit.

(M) The permittee must coordinate project work and installation of facilities in co-locations involving other public right-of-way users.

(N) The permittee must physically locate property lines abutting the project work. The permittee must replace, with the services of a Minnesota-licensed surveyor, any property corners or monuments disturbed as a result of the project.

(O) The permittee must daily remove all dirt or debris from sidewalks, trails, public and private roadway surfaces, curbs and gutters during project work.

(P) *County or state rights-of-way.* A public right-of-way user who is required to obtain a county or state permit for excavation or obstruction in a county or state right-of-way within the city must provide notification of the proposed activity to the director within one week after obtaining the permit but no less than 48 hours before the activity would begin.

(Q) *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.

§ 95.28 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.

§ 95.29 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 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat. §§ 237.162 and 237.163, as they may be amended from time to time. Installation of service laterals shall be performed in accordance with state law and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 95.34(C).

§ 95.30 INSPECTION.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minn. Rule 7819.1300.

(B) *Site inspection.* Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(2) The Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to § 95.32.

§ 95.31 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.* Each registrant shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this subchapter for the actions it took in response to the emergency.

(B) *Emergency work by city.* If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In the event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(C) *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 and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the code, deposit with the city the fees necessary to correct any damage to the right-of-way, and comply with all the requirements of this subchapter.

§ 95.32 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves the right, as provided herein, to revoke any right-of-way permit, 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 the 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 § 95.30.

(B) *Notice of breach.* If the Director determines that the basis for revocation exists, the Director may initiate revocation of the permit. If the violation is related to non-complying project work, the Director must notify the permittee of the actions necessary to remedy the violation and the date by which the correction must be completed, which must be a reasonable period of time. The Director may impose additional or revised conditions on the permit to mitigate or remedy the violation. If correction of the non-complying work is not completed within the required time or if another basis for revocation exists, the Director must provide written notice to the permittee of the basis for revocation and the date of the revocation hearing under division (C) below. The notice must be given to the permittee at least ten days before the date of the revocation hearing.

(C) *Hearing.* A revocation hearing must be held on the date and location specified in the notice, pursuant to City Code § 10.98. The purpose for the hearing will be to determine whether any of the grounds for revocation exist. No suspension or revocation may take effect until the permittee has been afforded a hearing as provided in this section.

(D) *Revocation costs.* If a permit is revoked, the permittee must reimburse the city for its reasonable costs (including restoration costs) incurred in connection with the revocation.

§ 95.33 INSTALLATION OF UNDERGROUND FACILITIES.

The permittee must comply with the following requirements when installing underground facilities.

(A) Underground facilities must, where reasonably possible, be installed outside the paved or improved area, in places with the least potential for future conflict. If unable to install outside the paved or improved area, the installation must be as close to the edge of the roadway surface as possible to allow access to the facilities without unnecessarily disturbing paved areas of the roadway.

(B) Public right-of-way alignment and grade must be maintained.

(C) Fiber facilities must be buried in a proper conduit and at a depth of no less than three feet and no more than four feet; copper facilities below concrete or bituminous paved roadway surfaces must be buried at a depth of no less than three feet and no more than four feet, and all other copper facilities must be buried at a depth of no less than 30 inches and no more than four feet.

(D) Except for gas, all underground facilities that cross streets or hard surfaced driveways must be bored and installed in conduit when requested by the city.

(E) When required, the permittee must excavate an observation hole over a city utility to ensure that a city utility is not damaged.

(F) If the project work involves an open cut, the permittee must install visual tracers 18 inches over buried facilities. If other construction methods are used, alternative location methods may be used upon approval by the city.

(G) During plowing or trenching of facilities, a warning tape must be placed at a depth of 18 inches above copper cables with over 200 pairs and fiber facilities, and a locating wire or conductive shield must be installed above buried telecommunication facilities, except for di-electric cables.

(H) Restoration of areas disturbed by facilities must include returning the right-of-way to the same condition that existed before excavation in accordance with Minnesota Rules, which indicate maximum limits of restoration methods and area requirements that the city can impose. The city and right-of-way user may agree to a lesser requirement. The right-of-way user is responsible for all of its work done in the public right-of-way, whether by employees, agents or independent contractors. Restoration must include compaction of the materials placed in the excavation of the subgrade and aggregate base, plus pavement replacement, in kind. All work must be performed according to the city's specifications and drawings. Installation of service laterals must be performed in accordance with Minnesota Rules and this section.

(I) All facilities must be located so as to not interfere with existing and potential future traffic signals and signs.

(J) Unless approved by the Director, all above ground appurtenances must be located no closer than ten feet from city hydrants, waterline valves, manholes, lift stations, and catch basins; not in front of any city or private sign, monument or amenity for facilities or parks; and no closer than two feet from sidewalks and trails.

(K) Underground facilities must not be installed within five feet of hydrants, waterline valves, lift stations, manholes or catch basins, unless approved by the Director.

(L) Underground facilities must not be installed between a hydrant and an auxiliary valve.

(M) The location and installation of telecommunications facilities must comply with the National Electric Safety Code, as incorporated by reference in Minnesota Statutes.

(N) Permittees employing trenchless excavation methods, including horizontal directional drilling, must follow all requirements set forth in Minnesota Statutes and Rules, and must use potholing or open cutting in order to determine the precise location of marked underground utilities before excavating. In addition, permittees employing trenchless excavation methods must not install facilities at a depth greater than four feet below grade, unless specifically approved by the Director.

§ 95.34 MAPPING DATA.

(A) *Information required.* Each registrant and permittee must provide "as built" mapping information in accordance with state rules and in a format acceptable to the city, providing the following:

(1) The location of all of its underground and above ground facilities and their appurtenances in the public right-of-way, identified by:

(a) Offsets from property lines, distances from the centerline of the public right-of-way and from curb lines and other reference points as requested by the city; or

(b) Coordinates derived from the coordinate system being used by the city; and

(c) Approximate depth of facilities.

(2) The type, quantity and size of the facilities;

(3) A dimensional description of aboveground appurtenances;

(4) A legend explaining symbols, characters, abbreviations, scale and other data shown on the map;

(5) The information in divisions (A)(1) through (A)(4) above also for restoration work; and

(6) The information in divisions (A)(1) through (A)(4) above also for abandoned facilities that remain in place.

(B) *Submittal requirements.*

(1) Within six months after the adoption of this subchapter, all public right-of-way users that own or control facilities within public rights-of-way within the city on that date must submit the detailed mapping including restoration data in accordance with this section for all facilities located within the public rights-of-way. Following initial mapping, all right-of-way users must by April 1 of every year submit either:

(a) Detailed mapping for all new facilities and restoration located within public rights-of-way in the city during the preceding calendar year; or

(b) Certification that no new facilities and restoration were installed.

(2) At the request of any public right-of-way user, information required by the city that qualifies as "trade secret" data under Minnesota law will be protected accordingly.

(C) *Service laterals.* The holder of a permit for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules, must establish the horizontal locations of installed service laterals and, when the Director reasonably requires it, the vertical locations of service laterals. Permittees or their subcontractors must submit this information to the Director in a form reasonably satisfactory to the Director within 30 days after completion of the work. Failure to provide prompt and accurate information

on the service laterals installed may result in the revocation of the permit issued for the work or the denial of future permits to the offending permittee or its subcontractors.

§ 95.35 GENERAL PUBLIC RIGHT-OF-WAY REGULATIONS.

(A) Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. Rules 7819.3100, 7819.5000, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.*

(1) 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 is or, pursuant to current technology, the city expects will someday 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.

(2) Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

(C) *Limitation of space.* To protect 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.

(D) *Damage to other facilities.* When the city does work in the right-of-way and finds it necessary to maintain, support or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The 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 damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

(E) *Nuisance.* One year after the passage of this subchapter, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

(F) *Pre-excavation facilities location.* In addition to complying with the requirements of Minn. Stat. §§ 216D.01 through 216D.09 ("One Call Excavation Notice System"), as they may be amended from time to time, before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

§ 95.36 UNDERGROUNDING.

(A) *Purpose.*

(1) The purpose of this section is to promote the health, safety and general welfare of the public and is intended to foster:

- (a) Safe travel over the right-of-way;
- (b) Non-travel related safety around homes and buildings where overhead feeds are connected; and
- (c) Orderly development in the city.

(2) Location and relocation, installation and reinstallation of facilities in the right-of-way must be made in accordance with this section.

(B) *Undergrounding of facilities.* Unless otherwise agreed in a franchise between the applicable right-of-way user and the city,

facilities in the right-of-way must be located or relocated and maintained underground in accordance with this section and applicable construction standards.

(C) *Undergrounding of permanent replacement, relocated or reconstructed facilities.* A permanent replacement, relocation or reconstruction of a facility of more than 300 feet must 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 is 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 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 will be allowed upon the conditions stated:

(1) *Technical/economic feasibility; promotion of policy.* Above-ground installation, construction or placement of facilities will be allowed in residential, commercial and industrial areas where the City Council finds that:

(a) Underground placement would place an undue financial burden upon the landowner, ratepayers or right-of-way user or would deprive the landowner of the preservation and enjoyment of substantial property rights;

(b) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions that adversely affect underground facilities placement; or

(c) The right-of-way user clearly and convincingly demonstrates that none of the purposes under § 95.35(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.

(2) *Temporary service.* Above-ground installation, construction or placement of temporary service lines will only be allowed:

- (a) During new construction of any project for a period not to exceed three months;
- (b) During an emergency in order to safeguard lives or property within the city; or
- (c) For a period of not more than seven months when soil conditions make excavation impractical.

(3) *Developer responsibility.* All owners, platters or developers are responsible for complying with the requirements of this section, and before final approval of any plat or development plan, must submit to the Director written instruments from the appropriate right-of-way users showing that all necessary arrangements for installation of such facilities have been made.

§ 95.37 RIGHT-OF-WAY VACATION.

(A) *Reservation of right.* If the city vacates a public right-of-way that contains the facilities of a public right-of-way user and the vacation does not require the relocation of the facilities, the city must reserve, for itself and the public right-of-way user, the right to install, maintain and operate facilities in the vacated public right-of-way and to enter upon the public right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the facilities.

(B) *Relocation of facilities.* If the local government unit vacates a right-of-way that contains the facilities of a right-of-way user and the right-of-way vacation requires the relocation of the right-of-way user's facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by the right-of-way user, the right-of-way user must pay the relocation costs; (2) if the vacation proceedings are initiated by the local government unit for a public project, the right-of-way user must pay the relocation costs unless otherwise agreed to by the local government unit and the right-of-way user; or (3) if the vacation proceedings are initiated for the purpose of benefitting a person other than the right-of-way user, the benefitted person must pay the relocation costs.

§ 95.38 INDEMNIFICATION AND LIABILITY.

(A) *Limitation of liability.* Issuance of a public right-of-way permit does not impose any liability on the city for:

(1) Injuries to persons, damage to property or loss of service claims by parties other than the permittee or the city; or

(2) Claims or penalties resulting from the installation, presence, maintenance or operation of facilities by registrants or permittees or activities of registrants or permittees.

(B) *Indemnification.* A registrant or permittee must indemnify and defend the city, its officials, employees and agents to the maximum extent that is allowed under Minn. Rule 7819.1250.

§ 95.39 ABANDONED AND UNUSABLE FACILITIES.

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operation 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 it from that right-of-way of required in conjunction with other right-of-way repair, excavation or construction, unless this requirement is waived by the city.

§ 95.40 INSURANCE.

(A) All certificate(s) of insurance or self-insurance required under this section must provide that:

(1) An insurance policy has been issued to the applicant by an insurance company authorized to do business in the State of Minnesota, or that the applicant has a form of self insurance acceptable to the Director;

(2) The applicant is insured against claims for personal injury, including death, and property damage arising out of the:

(a) Use and occupancy of the public right-of-way by the permittee, its officers, agents and employees; and

(b) Placement and use of facilities and equipment in the public right-of-way by the permittee, its officers, agents and employees, including protection against liability from completed operations, damage of underground facilities and collapse of property.

(3) The city is named as an additional insured for the coverages required under this section;

(4) The city must be notified 30 days in advance of cancellation of the policy or material modification of a coverage term; and

(5) The coverages and amounts of coverage are as required by the city.

(B) The city may require a copy of the actual insurance policies.

§ 95.41 APPEAL.

(A) A right-of-way user that:

(1) Has been denied registration;

(2) Had been denied a permit;

(3) Has had a permit revoked;

(4) Believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, Subd. 6, as it may be amended from time to time; or

(5) Disputes a determination of the Director regarding § 95.34(C) may have the denial, revocation, fee imposition or decision reviewed, upon written request, pursuant to City Code § 10.98.

(B) A decision by the independent hearing officer affirming the denial, revocation or fee imposition will be in writing and supported by written findings establishing reasonableness of the decision.

§ 95.55 VACATING PUBLIC LANDS, STREETS AND ALLEYS.

(A) *Procedure.* Upon its own motion, or upon petition of a majority of abutting landowners, with a vote of four of its members, the City Council may vacate any street, alley or public right-of-way within the city. The vacation must be adopted by ordinance.

(B) *Petitions.* Petitions must give a full statement of facts, contain a plat of the property in question, be verified by at least one petitioner, be accompanied by satisfactory proof of title to the property, and include the filing fee set by the city.

(C) *Notice.* Notice of the hearing will be mailed to abutting property owners one week prior to the hearing. The notice must also be published in the official newspaper for one week prior to the hearing.

(D) *Recommendations.* The City Council may secure recommendations from public officials, commissions, private individuals and may authorize payment for advisory services regarding the vacation.

(E) *Costs.* Upon granting any vacation, the City Council may require payment of all costs of the proceedings to compensate the city for its costs, and may impose any additional conditions deemed desirable in the public interest.

(F) *Rights preserved.* No vacation prevents the city's right or the right of any other individual or organization from later coming upon the property to repair or attend to lawfully established public utility installations, or to continue to keep and use lawfully established public utility installations on the property.

(G) *Filing.* After granting any vacation, the city may execute and deliver a quitclaim deed documenting the vacation.

CHAPTER 96: TREES

Section

Plantings and Landscaping on Boulevards

- 96.01 Purpose
- 96.02 Definitions
- 96.03 Permitted trees
- 96.04 Size and location of permitted trees
- 96.05 Removal of boulevard trees
- 96.06 Public works and utilities
- 96.07 Time for trimming of trees
- 96.08 Permitted plantings and landscaping
- 96.09 Size and location of permitted plantings and landscaping

Tree Diseases and Shade Tree Pest Control

- 96.20 Tree diseases and shade tree pest control

PLANTINGS AND LANDSCAPING ON BOULEVARDS

§ 96.01 PURPOSE.

It is the purpose of this subchapter to protect and promote the public health, safety and general welfare by allowing property owners

to plant and maintain the boulevard areas adjoining their property in a manner that enhances and improves the aesthetic appearance of city streets, avenues and alleys, as well as prevent and abate hazardous and nuisance conditions within the city.

§ 96.02 DEFINITIONS.

For purposes of this subchapter, the terms defined have the following meanings.

BOULEVARD. The public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway.

LANDSCAPED AREA. The area within which plantings and landscaping materials are placed.

LANDSCAPING MATERIALS. Dirt, rock, pavers, stepping stones, wood or similar materials.

NOXIOUS WEEDS. The annual, biennial and perennial plants that are deemed by the Minnesota Commissioner of Agriculture to be injurious to public health, environment, public roads, crops, livestock and other property.

PLANTINGS. Trees, flowers, grass and other plants.

§ 96.03 PERMITTED TREES.

A list of approved trees that may be planted on the boulevard portion of a public right-of-way is on file in the office of the Public Works Director.

§ 96.04 SIZE AND LOCATION OF PERMITTED TREES.

All trees planted must be at least one inch in diameter at six inches above the ground. Trees must be cultivated nursery stock with straight trunks not less than six feet high. No trees shall be placed so as to cause a traffic hazard. Specific measurement regulations are as follows.

(A) *Spacing.* Required spacing guidelines will be provided by the Public Works Director on the approved list of trees.

(B) *Curb returns and intersections.* Trees must not be planted closer than 30 feet from future or existing curb returns at intersections.

(C) *Driveways.* Trees must be planted at least five feet from driveways.

(D) *Boulevards.* Except where special permit is obtained from the Public Works Director, no tree may be planted on any boulevard where the distance between the nearest edge of the sidewalk and curb is less than three feet.

(E) *Sidewalks and curbs.* Trees must be a maximum of one and a half feet from the nearest public street pavement, curb, sidewalk or trail. All trees must be planted equally distant from the nearest edge of the proposed or existing sidewalk and curb, except when the Public Works Director may direct otherwise.

(F) *Assistance.* The Public Works Director will assist in staking out the location of the tree planting.

§ 96.05 REMOVAL OF BOULEVARD TREES.

(A) *City removal.* The city can remove trees that are determined by the Public Works Director to be diseased, dangerous or a public nuisance according to the following rules:

(1) Removal of trees will not leave the stump above boulevard level.

(2) Removal of any tree is to be approved by the Public Works Director before removal.

(3) When the city removes trees in connection with public improvements, new trees may be planted if the city determines it is practical.

(B) *Resident requests.* The owner of property abutting a boulevard may request the removal of a boulevard tree from in front of the owner's property. If deemed necessary by the Public Works Director, the tree will be removed by the city at no cost to the property owner.

§ 96.06 PUBLIC WORKS AND UTILITIES.

(A) Notwithstanding the foregoing, all such Boulevards remain public property and subject to the right of the city to perform necessary work, to plant, trim and otherwise maintain trees, to access, maintain, install and repair utilities and to store excess snow.

(B) In the event the city interferes with or damages any boulevard plantings or landscaping materials in the course of such work, the city is responsible only to restore the boulevard to the original grassy state by use of black dirt and grass seed.

(C) The city shall not be liable for any damage to, disruption of or removal of plantings or landscaping materials, either direct or indirect, as a result of the city, its employees, agents or contractors performing any snow plowing, street sweeping, or installation, maintenance or repairs within the boulevard.

(D) Further, the city has the right to remove or restrict any plantings or landscaping that are deemed to interfere with the safety of pedestrians or motorists.

(E) The property owner shall be liable for and shall indemnify the city for the costs of any damage to city property caused by the plantings or landscaping materials during the course of performing any snow plowing, street sweeping, or installation, maintenance or repairs in the boulevard, unless such damage was caused by the city's negligence.

§ 96.07 TIME FOR TRIMMING OF TREES.

The normal period for tree trimming will be in late fall through early spring.

§ 96.08 PERMITTED PLANTINGS AND LANDSCAPING.

In addition to planting boulevard trees as permitted in this section, property owners are permitted to plant, care for and maintain plantings and landscaping on the boulevards adjacent to their property, subject to the restrictions set forth herein.

§ 96.09 SIZE AND LOCATION OF PERMITTED PLANTINGS AND LANDSCAPING.

(A) Plantings and landscaping materials in the boulevard may not exceed 36 inches in height. However, plantings and landscaping materials in the boulevard may not exceed 18 inches in height when located:

- (1) Within 30 feet of any intersection as measured from the property line; or
- (2) Within five feet of any alley or driveway; or
- (3) Within five feet of any public utility fixture.

(B) Where no sidewalks exist, the landscaped area must provide for the passage of pedestrian traffic.

(C) Plantings and landscaping materials must be maintained in such a way that there is no overhang or encroachment onto the sidewalk, curb, street, or alley. They must be contained within the landscaped area.

(D) No noxious weeds may be planted, maintained or allowed to proliferate within the landscaped area.

(E) No fences, berms, or retaining walls may be constructed within the landscaped area.

(F) Property owners may not alter the grade of the boulevards within the landscaped area.

(G) The landscaped area must not be maintained as dirt exclusively. At a minimum, the landscaped area must be seeded for and maintained as grass.

§ 96.20 TREE DISEASES AND SHADE TREE PEST CONTROL.

(A) *Declaration of policy.* The health of the trees in the city is threatened by shade tree pests, and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the city and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with Minn. Stat. §§ 89.001, 89.01 and 89.51 through 89.64, as those sections may be amended from time to time, the provisions of this section are adopted to attempt to control and prevent the spread of these shade tree pests.

(B) *Jurisdiction.* The city shall have control of all street trees, shrubs and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the city limits, and shall have the power to plant, care for, maintain, remove and replace such trees, shrubs and other plantings.

(C) *Declaration of a shade tree pest.* The city may declare any vertebrate or invertebrate animal, plant pathogen, or plant threatening to cause significant damage to a shade tree or community forest in the community, 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.

(D) *Public nuisances declared.* A shade tree pest occurring within a declared control zone is a public nuisance.

(E) *Shade tree pest nuisances are unlawful.* It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in § 94.15.

(F) *Definition of control areas.* Upon declaring a shade tree pest, the city may define one or more locations within the geographic boundaries of the city to be within a shade tree pest control area, provided the locations are characterized by biologic, composition, environmental and size factors favorable to successful application of the control measures prescribed by the city.

(G) *Tree Inspector.* The city may appoint a Tree Inspector. The Tree Inspector will recommend to the Council the details of any program for the declaration, control and prevention of shade tree pests. The Tree Inspector is authorized to enforce or cause to be enforced the duties incident to such a program adopted by the Council.

(H) *Abatement of shade tree pest nuisances.* In abating a nuisance declared by ordinance under divisions (B) and (C) above, the organism, condition or plant and any tree, wood or material identified as injurious to the health of shade trees shall be removed or effectively treated so as to destroy and prevent as fully as possible the spread of the shade tree pest. The abatement procedures shall be carried out in accordance with the control measures and areas prescribed by ordinance according to divisions (C) above and (K) and (O) below.

(I) *Reporting discovery of shade tree pest.* Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of public nuisance caused by a shade tree pest as defined under division (C) above shall report the same to the city.

(J) *Registration of tree care firms.* Any person, firm or corporation that provides tree care, tree trimming or removal of trees, limbs, branches, brush or shrubs for hire must be registered with the State Commissioner of Agriculture under Minn. Stat. § 18G.07, as it may be amended from time to time.

(K) *Inspection and application of control measures.*

(1) The Tree Inspector is authorized to cause premises and places within the city to be inspected to determine whether shade tree pests exist thereon and to investigate all reported incidents of shade tree pests. The Tree Inspector shall have the power to take all reasonable precautions to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms or by tests as may be recommended by the Commissioner of the State Department of Agriculture or the Commissioner of the State Department of Natural Resources.

(2) Except in situations of imminent danger to human life and safety, the Tree Inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident or other person in control of the property, unless the Tree Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

(3) No person, firm or corporation shall interfere with the Tree Inspector acting under his or her authority while engaged in activities authorized by this section.

(L) *Declared shade tree pests, control measures and control areas.*

(1) *Oak Wilt.* Oak Wilt is declared a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus *Quercus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacearum*. Control measures prescribed for abating Oak Wilt Disease are:

(a) *Installation of a root graft barrier.* A root graft barrier can be ordered installed to prevent the underground spread of Oak Wilt Disease. The city will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root grafted trees. The barrier is created by excavating or vibratory plowing a line at least 42 inches deep between any oak tree infected with Oak Wilt Disease and each nearby and apparently healthy oak tree within 50 feet of the infected tree;

(b) *Removal and disposal of trees on property zoned for residential and commercial use.* On property that is zoned residential and commercial, the city may mark for removal trees that have the potential to produce spores of the fungus *Ceratocystis fagacearum*. After, and in no case before the installation of the root graft barrier and no later than May 1 of the year following infection all marked trees must be felled. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked. If, however, after the city prescribes the location for a root graft barrier, the city determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the city 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 infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked;

(c) *Removal and disposal of trees on all other property.* On all other property, the city 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 infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked;

(d) *Wood disposal.* All wood more than three inches in diameter or ten inches in circumference from such felled trees must be disposed of by burying or debarking or chipping or sawing into wane free lumber or by splitting into firewood, stacking the firewood and immediately covering the woodpile with unbroken four mil or thicker plastic sheeting that is sealed into the ground until October 1 of the calendar year following the calendar year in which the tree was felled or by burning before May 1 of the year following infection. Wood chips from infected trees may be stockpiled or immediately used in the landscape; and

(e) *Control area.* The **CONTROL AREA** for Oak Wilt Disease is defined as all lands within the boundaries of the city.

(2) *Emerald Ash Borer.* Emerald Ash Borer is declared a shade tree pest and is defined as an insect that attacks and kills ash trees. The adults are small, iridescent green beetles that live outside of trees during the summer months. The larvae are grub or worm like and live underneath the bark of ash trees.

(a) Control measures prescribed for abating Emerald Ash Borer are those provided in the document, Minnesota Emerald Ash Borer Science Advisory Group Recommendations on Preparing for Emerald Ash Borer in Minnesota.

(b) *Definition of control areas.* The **CONTROL AREA** for Emerald Ash Borer is defined as all lands within the boundaries of the city.

(3) *Dutch elm disease.* Dutch elm disease is declared a shade tree pest and is defined as a disease of elm trees caused by the fungus *Ophiostoma ulmi* or *Ophiostoma novo ulmi*, and includes any living or dead tree, log, firewood, limb, branch, stump or other portion of a tree from any species of the genus *Ulmus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo ulmi*.

(a) Control measures prescribed for abating Dutch elm disease are:

1. *Use of fungicide.* Fungicides may be effective in preventing Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense.

2. *Removal and disposal of trees.* Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15 must be removed within 20 days of detection (alternative: 30 days). Trees that wilt after July 15 must be removed by April 1 of the following year. Diseased trees not promptly removed will be removed by the city at the landowner's expense. Wood may be retained for use as firewood or sawlogs if it

is de barked or covered from April 15 to October 15 with 4mm plastic. The edges of the cover must be buried or scaled to the ground.

(b) The **CONTROL AREA** for Dutch elm disease is defined as all lands within the boundaries of the city.

CHAPTER 97: PREDATORY OFFENDERS

Section

- 97.01 Findings and intent
- 97.02 Definitions
- 97.03 Residence prohibition; penalties; exceptions
- 97.04 Renting real property; penalties

§ 97.01 FINDINGS AND INTENT.

(A) Repeat predatory offenders, predatory offenders who use physical violence and predatory offenders who prey on children and vulnerable individuals are predators who present a threat to the public safety. Predatory offenders are likely to use physical violence or force and to repeat their offenses. Most predatory offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. Moreover, predatory offenders often learn and evolve as they commit additional offenses, thereby making detection of their unlawfulness more difficult for authorities. This makes the cost of predatory offender victimization to society at large, while incalculable, clearly exorbitant.

(B) It is the intent of this chapter to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children and vulnerable individuals regularly congregate wherein certain predatory offenders are prohibited from establishing a primary or secondary address.

(Ord. 16-13, passed 12-12-2016)

§ 97.02 DEFINITIONS.

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

DESIGNATED SEXUAL OFFENSE. A conviction, adjudication of delinquency, commitment under M.S. Ch. 253B, or admission of guilt under oath without adjudication involving any of the following offenses: M.S. §§ 609.342, 609.343, 609.344, 609.345, 609.352, 609.365, 617.23, 617.246, 617.247, 617.293, successor statutes, or a similar offense from another state.

PREDATORY OFFENDER. Any person who is required to register as a predatory offender under M.S. § 243.166, or has been convicted of a designated sexual offense, regardless of whether the adjudication has been withheld, in which the victim of the offense was less than 16 years of age. However, the terms do not include persons required to register based solely on a delinquency adjudication.

PRIMARY ADDRESS. The mailing address of the person's dwelling. If the mailing address is different from the actual location of the dwelling, primary address also includes the physical location of the dwelling described with as much specificity as possible.

SECONDARY ADDRESS. The mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary address. If the mailing address is different from the actual location of the place, secondary address also includes the physical location of the place described with as much specificity as possible. However, the location of a supervised publicly or privately operated shelter or facility designated to provide temporary living accommodations for homeless individuals as defined in M.S. § 116L.361, subd. 5, does not constitute a secondary address.

(Ord. 16-13, passed 12-12-2016)

§ 97.03 RESIDENCE PROHIBITION; PENALTIES; EXCEPTIONS.

(A) *Prohibited location of residence.* It is unlawful for any designated offender to establish a primary address or secondary address within 1,200 of any of the following places:

- (1) Public or private school;
- (2) Licensed child care facilities; or
- (3) State licensed residential care facilities or registered housing with services establishments.

(B) *Prohibited activity.* It is unlawful for any designated offender to participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, or wearing an Easter bunny costume on or preceding Easter. Holiday events in which the offender is the parent or guardian of the children involved, and no non-familial children are present, are exempt from this division.

(C) *Measurement of distance.*

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the primary address or secondary address to the nearest outer property line of the places identified in division (A).

(2) The City Clerk shall maintain an official map showing prohibited locations as defined by this chapter. The Clerk shall update the map at least annually to reflect any changes in the location of prohibited zones.

(D) *Penalties.* Any person violating any provision of this chapter shall be guilty of a misdemeanor or administrative citation and shall be punished as provided in this code. Each day a person maintains a residence in violation of this chapter constitutes a separate violation.

(E) *Exceptions.* A predatory offender residing within a prohibited area as described in division (A) of this section does not commit a violation of this section if any of the following applies:

- (1) The person established the primary address or secondary address and reported and registered the residence pursuant to M.S. §§ 243.166, 243.167, or successor statute, prior to December 18, 2016.
- (2) The person was a minor when he/she committed the offense and was not convicted as an adult.
- (3) The person is a minor.
- (4) The school, licensed child care facility, state licensed residential care facilities or registered housing with services establishment within 1,200 of the person's primary address or secondary address was opened after the person established the primary address or secondary address and reported and registered the residence pursuant to M.S. §§ 243.166 or 243.167.
- (5) The residence is also the primary address and secondary address of the person's parents, grandparents, adult children, or spouse.

(Ord. 16-13, passed 12-12-2016)

§ 97.04 RENTING REAL PROPERTY; PENALTIES.

(A) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a primary address or secondary address by any person prohibited from establishing such primary address or secondary address pursuant to this chapter, if such place, structure, or part thereof, trailer or other conveyance, is located within a prohibited location zone described in § 97.03 (A) of this chapter.

(B) A property owner's failure to comply with provisions of this section shall constitute a violation of this section.

(C) If a property owner discovers or is informed that a tenant is a designated offender after signing a lease or otherwise agreeing to let the offender reside on the property, the owner or property manager may evict the offender.

(Ord. 16-13, passed 12-12-2016)

Chapter

110. GENERAL LICENSING**111. BUSINESSES GENERALLY****112. ALCOHOLIC BEVERAGES****113. TOBACCO****CHAPTER 110: GENERAL LICENSING**

Section

110.01 General rules

110.02 Trades, professions, businesses and privileges requiring licenses

110.03 Application

110.04 General conditions of license

110.05 Renewal of license

110.06 Persons and locations ineligible for a license

110.07 License term

110.08 Display of license certificate

110.09 Premises covered by license

110.10 Transfer of license

110.11 Inspections

110.12 License hearing

§ 110.01 GENERAL RULES.

(A) *License required.* It is unlawful for any person to engage in any trade, profession, business or privilege in the city for which the code requires a license without first obtaining approval for the license from the City Council in the manner provided in this chapter. A license must be obtained for each location at which the licensee conducts business.

(B) *Activity conducted without license.*

(1) When an activity that requires a license pursuant to the city code is conducted without a license or the licensee has not renewed an existing license prior to its expiration date and the licensed activity continues, the city may pursue any one or all of the following remedies:

(a) No new license shall be granted until the applicant pays the late fee pursuant to § 110.03(C)(7)(c), unless otherwise approved by the City Council;

(b) The city may issue a criminal citation for operating without a license;

(c) The city may issue an administrative citation for operating without a license; and/or

(d) The city may post a cease and desist order ("cease and desist order") for the licensed activity preventing the business from conducting the activity until a license is approved.

1. If a business has an existing license for the licensed activity and the license expires, then the City Clerk shall provide the owner with 20 days' calendar notice to cease and desist the activity ("cease and desist notice"). If no completed application is received by the City Clerk prior to the expiration of the date given in the cease and desist notice, then the city shall post a cease and desist order for the activity for which a license is required.

2. If a new business is conducting an activity for which a license is required or an existing business is conducting a new activity for which a license is required and no license has been approved, then the city may immediately and without notice, post a cease and desist order for the activity for which a license is required.

(2) Any business that continues to conduct an activity for which a license is required without an approved license shall be in violation of this chapter.

(2001 Code, § 1005.01)

§ 110.02 TRADES, PROFESSIONS, BUSINESSES AND PRIVILEGES REQUIRING LICENSES.

(A) The following trades, professions, businesses and privileges in the city require licenses:

(1) Amusements and amusement devices:

- (a) Carnivals;
- (b) Gambling;
- (c) Special events; and
- (d) Live entertainment.

(2) Animals:

- (a) Cats;
- (b) Dogs;
- (c) Dangerous dogs;
- (d) Exceeding number of animals permit; and
- (e) Exotic animals permit.

(3) Commercial and service activities:

- (a) Sexually oriented businesses;
- (b) Laundry;
- (c) Massage therapy, business and personal;
- (d) Pawnbroker;
- (e) Peddlers, solicitors and transient merchants;
- (f) Precious metal dealers;
- (g) Rubbish hauler (commercial and residential);
- (h) Second hand dealer;
- (i) Tattoo/body art business;
- (j) Tobacco; and
- (k) Legal fireworks.

(4) Intoxicating and 3.2% malt liquor, wine and beer:

(a) Intoxicating liquor:

1. Off-sale;
2. On-sale:
 - a. Category 1; and
 - b. Category 2.
3. Outside service;
4. Sunday sales;
5. Temporary on-sale;
6. Temporary outside service;
7. Wine; and
8. Consumption and display permit.

(b) 3.2% malt liquor:

1. Off-sale;
2. On-sale;
3. Outside service;
4. Temporary on-sale; and
5. Temporary outside service.

(5) Motor vehicle related business:

- (a) Motor vehicle related;
- (b) Motor vehicle sales (including motorcycles and recreational vehicles), leasing and rentals; and
- (c) New and used motor vehicle dealer/broker.

(6) Other:

- (a) Courtesy benches;
- (b) Residential housing evaluators/inspectors; and
- (c) Residential rental dwellings.

(B) *Relation to other code provisions.* The requirements of this section may be supplemented by other sections of the city code.

(2001 Code, § 1005.03) (Ord. 07-01, passed - -; Ord. 07-19, passed - -; Ord. 10-05, passed - -; Ord. 10-19, passed - -; Ord. 11-14, passed - -; Ord. 12-07, passed - -; Ord. 12-29, passed - -)

§ 110.03 APPLICATION.

(A) Application for a license must be made to the City Clerk upon forms provided by the city.

(B) After the city has received a completed application, including all required documentation, appropriate fees and a completed background investigation, the license will be submitted to the City Council for consideration.

(C) Incomplete applications will be rejected by the City Clerk and will not be submitted to the City Council.

(1) *Natural person.* If the applicant is a natural person, the applicant may be required to provide the following information:

- (a) Full name, place and date of birth;
 - (b) Street resident addresses of where the applicant has lived during the past five years and telephone numbers and dates for which such addresses and phone numbers were used;
 - (c) Whether the applicant is a citizen of the United States or a resident alien;
 - (d) Whether the applicant has ever been known by a name other than the applicant's name and, if so, the name or names used, including maiden names, and information concerning dates and places used;
 - (e) The type, name and location of every business or occupation in which the applicant has been engaged during the preceding five years and the names or addresses of the applicant's employers and partners, if any, for the preceding five years, and corresponding dates of employment;
 - (f) Whether the applicant has ever been convicted of a felony, gross misdemeanor, misdemeanor, including violations of a municipal ordinance, but excluding minor traffic violations, directly related to the business for which a license is sought. If so, the applicant must furnish information as to the date, time, place of conviction and nature of the offenses;
 - (g) A physical description of the applicant;
 - (h) The applicant's current personal financial statement and copies of the applicant's federal and state tax returns for the two years prior to the application;
 - (i) The applicant's Social Security number; and
 - (j) If the applicant does not manage the business, the name of the managers or other persons in charge of the business and all information concerning each of them pursuant to divisions (C)(1)(a) through (C)(1)(h) above.
- (2) *Partnership.* If the applicant is a partnership, the applicant may be required to provide the following information:
- (a) The names and addresses of all general and limited partners and all information concerning each general partner pursuant to divisions (C)(1)(a) through (C)(1)(h) above;
 - (b) The names of the managing partners and the interest of each partner in the licensed business;
 - (c) A copy of the partnership agreement. If the partnership is required to file a certificate as to a trade name pursuant to Minn. Stat. § 333.01, as it may be amended from time to time, a certified copy of the certificate must be attached to the application;
 - (d) The applicant's federal tax identification number and state employer identification number; and
 - (e) If the applicant does not manage the business, the name of the managers or other persons in charge of the business and all information concerning each of them pursuant to divisions (C)(1)(a) through (C)(1)(h) above.
- (3) *Corporation.* If the applicant is a corporation or other organization, the applicant may be required to provide the following information:
- (a) The name of the corporation or business and the state of incorporation;
 - (b) A copy of the articles of incorporation or association agreement and bylaws. If the applicant is a foreign corporation, a certificate of authority as required by Minn. Stat. § 303.06, as it may be amended from time to time, must be attached;
 - (c) The applicant's federal tax identification number and state employer identification number;
 - (d) The name of the managers or other persons in charge of the business and all information concerning each manager, proprietor or agent pursuant to divisions (C)(1)(a) through (C)(1)(h) above;
 - (e) A list of all persons who control or own an interest in excess of 5% in the organization or business or who are officers of the corporation or business and all information concerning the persons pursuant to divisions (C)(1)(a) through (C)(1)(h) above. This provision, however, does not apply to a corporation whose stock is publicly traded on a stock exchange and the corporation is applying for a license to be owned and operated by itself.
- (4) *Additional information from all applicants.* All applicants must provide the following additional information:
- (a) Whether the applicant holds a current license or has ever held a license from any governmental unit, including the city;
 - (b) Whether the applicant has ever had a license in any city or state denied, revoked or suspended and the reason for the

denial, revocation or suspension;

(c) 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 Minn. Stat. § 333.01, as it may be amended from time to time;

(d) The street addresses and telephone numbers of the premises at which the business will be conducted;

(e) The exact legal description of the premises to be licensed, if applicable;

(f) If the applicant does not own the business premises, a true and complete copy of the executed lease for the premises, if applicable;

(g) If the applicant is applying for a personal business license, a copy of the independent contractor, employment agreement or executed statement from the business owner that the applicant is authorized to conduct business at the business premises;

(h) Whether all real estate and personal property taxes that are due and payable for the premises have been paid and, if not paid, the years and amounts that are unpaid;

(i) A written declaration by the applicant, under penalty of perjury, that the information contained in the application is true. If the applicant is a corporation, an officer must sign the written declaration. If the applicant is a partnership, a general partner must sign the written declaration. If the applicant is an unincorporated association, the manager or managing officer must sign the written declaration;

(j) If the licensed activity requires prior approval from another government entity, provide evidence of that approval; and

(k) Other information as the city may require.

(5) *Background investigations.* In order to protect the general welfare of the public, certain license applications may require a personal background and/or a business background investigation. If so required, the investigations will be conducted pursuant to this section, as well as § 30.05(C). If the applicant simultaneously submits an application for more than one license and each license requires a personal and/or business background investigation, the applicant shall only be required to pay the fee for one personal background and one business background, if applicable. If the investigation fees for the various licenses differ, the higher fees shall apply.

(a) *Authorization.* At the time of making an initial or renewal license application that requires a personal or business background investigation, the applicant must provide written authorization to the city to investigate all facts set out in the application and to do a personal and business background investigation on the applicant. A criminal background investigation shall be conducted as part of a personal background investigation. The information obtained from the investigation shall be used to assist the Police Chief in making a recommendation as to whether the applicant should be granted a license. The recommendation may be based on any of the following criteria:

1. Whether the applicant was convicted of a crime or offense in the last five years involving or directly relating to the business for which a license is sought;

2. Whether there is a material misrepresentation in the application; and

3. Whether the applicant is of good moral character.

(b) *Investigation fee.* All applicants that must undergo a background investigation must pay an investigation fee with the license application. Separate fees shall be charged for personal background investigations and business background investigations. The City Council establishes the investigation fees by City Council resolution. If an applicant applies for an additional license within a calendar year, then the applicant shall only be required to pay the renewal fee.

(6) *Insurance coverage.* The applicant must file with the City Clerk a certificate of insurance from an insurance company duly licensed and qualified to do business in the state, on a form approved by the city.

(a) *Coverage requirements.* The insurance policy certified must provide coverages and amounts as required by the city.

(b) *Coverage changes and cancellation.* The applicant may not cancel or change the insurance without 30 days' prior written notice to the City Clerk by certified mail. The certification of insurance must be continuously in effect until 30 days after receipt of the written notice of cancellation or change, provided however, the certification must not extend for more than two years.

(7) *License fees.* License fees must be paid before the city will grant the license.

(a) *Fee determination.* The fees for licenses are established by City Council resolution.

(b) *Refunds.* License fees are generally non-refundable. License fees may be refunded if the application is withdrawn within five days after its submission.

(c) *Late fees.* An applicant who submits a completed application to renew a license less than 30 days prior to its expiration date, shall pay a late fee pursuant to the fee schedule, in addition to the license fee.

(d) *Pro-rated license fees.* In unique circumstances, the City Council may hold a hearing to determine if it is appropriate to pro-rate a particular license fee. License fees will not be pro-rated for a portion of a license term, except for the following licenses, payment for which shall only be for the portion remaining in the license term:

1. On-sale intoxicating liquor;

2. Pawnbroker;

3. Precious metal dealer;

4. Tobacco;

5. Provisional license fees. The City Council may require an additional fee for provisional licenses that is in addition to the regular license fee, due to the extraordinary monitoring that is required by city staff. The additional provisional license fee shall be set by the City Council upon approval of a provisional license; and

6. Installment payments. For on-sale liquor licenses only, the licensee may pay the license fee in two equal installments, due on or before December 15 for the upcoming license term and on or before June 15 for the remainder of the existing license term. An administrative fee will be imposed for licensees who pay the license fee in installments. Failure to pay any installment payment when due may result in revocation or suspension of the license. In addition, late fees, as provided in division (C)(7)(c) above will be imposed.

(2001 Code, § 1005.05)

§ 110.04 GENERAL CONDITIONS OF LICENSE.

A licensee is responsible for the conduct of his or her place of business and the conditions of order in it. The act of an employee of the licensed premises is deemed the act of the licensee as well, and the licensee is responsible for all penalties provided by this chapter equally with the employee.

§ 110.05 RENEWAL OF LICENSE.

License renewals are issued in the same manner and subject to the same conditions as a new license application.

(A) *Renewal date.* Licensees must submit their applications for renewal of their licenses at least 30 days prior to its expiration.

(B) *Exception.* The renewal date application deadline does not apply to licenses issued for work performed in or on city streets or sidewalks pursuant to a contract with the city or contractors who do not perform work continuously in the city, who need only obtain a license prior to commencing any work.

(C) If a timely submission of a renewal application is made by an applicant in good standing, but the City Council does not act upon the application prior to December 31, then upon written authorization by the city, the applicant may continue to operate until the City Council considers the renewal application.

(2001 Code, § 1005.09)

§ 110.06 PERSONS AND LOCATIONS INELIGIBLE FOR A LICENSE.

The City Council may not issue a license to an applicant, if the applicant:

(A) Is a minor at the time the application is filed;

(B) Has been convicted of a felony, gross misdemeanor or misdemeanor punishable by jail, the crime is directly related to the

license sought and the applicant has not shown by competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business; or

(C) Is not a citizen of the United States or a resident alien of the United States.

(2001 Code, § 1005.11)

§ 110.07 LICENSE TERM.

(A) Except as stated in division (B) below, the term of the license year begins on January 1 and ends on December 31 or for the period of time for which the applicant applied, whichever is shorter.

(B) The term of the license year for rental licenses is stated in § 150.037.

(2001 Code, § 1005.13)

§ 110.08 DISPLAY OF LICENSE CERTIFICATE.

(A) *Personal business license.* Where the license is a personal business license and the licensed activity is conducted at various locations or establishments, the licensee must carry the license on the licensee's person at all times when engaged in the activity for which the city granted the license.

(B) *Business license.* Where the licensed activity is conducted at fixed places of business or establishments, the certificate must be exhibited at all times in a conspicuous place on the premises. The license must be posted in a conspicuous place at or near the entrance to the business so that it may be easily read at any time.

(C) *License display requests.* The licensee must present the license certificate upon demand of any police officer, authorized representative of the city or resident.

(2001 Code, § 1005.15)

§ 110.09 PREMISES COVERED BY LICENSE.

Unless otherwise authorized by this code, the license issued is only effective for the compact and contiguous space specified in the approved license application.

(2001 Code, § 1005.17)

§ 110.10 TRANSFER OF LICENSE.

Except as otherwise provided in § 112.07, a license holder shall not transfer a license to another person or entity. A licensee may not transfer a license to a new location without the prior authorization of the Council. A pre-license inspection may be required prior to the transfer to a new location.

(2001 Code, § 1005.19)

§ 110.11 INSPECTIONS.

(A) An applicant or license holder must permit Health Officials, representatives of the Police Department, Fire Department, licensing staff and Building Department to inspect the licensed premises of a business for the purpose of ensuring compliance with the law, at any time it is open and occupied for business.

(B) For certain businesses, a pre-license inspection may be required, in which case, the appropriate city official will make arrangements for an inspection.

(C) Pre-license inspections are required for the following licenses:

- (1) Sexually oriented businesses;
- (2) Dangerous dogs;
- (3) Intoxicating liquor;
- (4) Massage therapy business; and
- (5) Special animal permits (see § 90.04(B)).

(2001 Code, § 1005.23) (Ord. 11-44, passed - -)

§ 110.12 LICENSE HEARING.

(A) New or renewal application consideration.

(1) *City Council action.* The City Council must take action on each new and renewal license application within a reasonable time following receipt of the recommendation from city staff regarding the application.

(2) *Procedure.* At the City Council meeting at which the license application is considered, any person must be provided an opportunity to be heard for or against the license. The City Council may then take any of the following actions:

- (a) Approve the license;
- (b) Deny the license;
- (c) Approve a provisional license;
- (d) Approve the license with reasonable conditions; or
- (e) Continue the license application.

(3) *Provisional license.* The City Council may issue a provisional license or convert a regular license to a provisional license to any existing business that has generated more than three violations of city code or state statutes within the preceding 12-month period. At the time of approval of the provisional license, the City Council shall approve a mitigation plan. The mitigation plan may include adding security measures, improving the exterior of the property, reducing or changing the hours of operation, holding neighborhood meetings, or other steps the Council deems appropriate. The license term for a provisional license shall coincide with the license term of a regular license for the same activity.

(4) *License with reasonable conditions.* The City Council may add reasonable conditions upon approval of a regular license, if deemed appropriate.

(B) *Denial, suspension or revocation hearing.* The Council or its designee may hold a hearing to take action on a business license or licensed activity to deny, suspend or revoke a license or to consider other actions against the business. Any license may be denied, suspended or revoked for one or more of the following reasons:

- (1) The proposed use does not comply with the Zoning Ordinance (Chapter 153);
- (2) The proposed use does not comply with health, building, maintenance or other provisions of the city code or state law;
- (3) The applicant has failed to pay all of the appropriate fees related to the license, or is delinquent on any other city fees;
- (4) The applicant has made fraudulent statements, misrepresentations, not fully disclosed information or made false statements in the application or investigation for or in the course of the applicant's business;
- (5) Conviction of any crime or offense in the previous five years involving or relating to the business that is licensed or the type of licensed activity and the applicant or licensee has failed to show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business;
- (6) The licensee has conducted the licensed activity in such a manner as to constitute a breach of the peace, a menace to the health, safety and welfare of the public, or a disturbance of the peace or comfort of the residents of the city, upon recommendation of the Police Chief or an appropriate city official;
- (7) Expiration or cancellation of any required insurance or failure to notify the city within a reasonable time of changes in terms

of the insurance or the carriers;

- (8) The licensee has acted in an unauthorized manner or beyond the scope of the license granted;
- (9) The applicant's license has been denied, revoked or suspended by the city, the state or another government unit;
- (10) Failure to allow inspections of the licensed premises, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business;
- (11) Failure to continuously comply with all conditions required as precedent to the approval of the license;
- (12) Real estate or personal property taxes on the business premises have become delinquent and the property owner and the applicant are the same person or entity, or have any common ownership between the property owner and the applicant where they are a different person or entity;
- (13) Violation of any regulation or provision of the city code or Zoning Ordinance applicable to the activity for which the license has been granted, or any regulation or state law that may be applicable;
- (14) The applicant or licensee has been found guilty of professional misconduct, either criminally or civilly;
- (15) Based on the findings of a background investigation, granting a license would be a menace to the safety, health, morals and welfare of the public;
- (16) The applicant or licensee is not of good moral character;
- (17) The licensee has violated a condition of its provisional license;
- (18) The activity has been conducted without a license; or
- (19) Other good cause.

(C) *Temporary suspension.* The City Council or its designee may temporarily suspend a license when, in its judgment, the public health, safety and welfare is endangered by the continuance of the licensed activity.

(D) *Suspension or revocation hearing.* A hearing for consideration of suspending or revoking a license will be conducted before the City Council or its designee. At the hearing, the licensee has the right to be represented by counsel, the right to respond to the charges, the right to present evidence through witnesses under oath and the right to confront and cross-examine witnesses under oath.

(1) *Notice.*

(a) Before holding the suspension or revocation hearing regarding the business license, the city must provide written notice informing the licensee of the right to a hearing.

(b) The notice must provide at least 20 calendar days' notice of the time and place of the hearing and must state the grounds for the action proposed to be taken.

(c) The notice may be served upon the licensee personally or by leaving the notice at the licensed premises with the person in charge, or by certified mail to the address on the license application or where the business activity is conducted.

(2) *Final decision.* Following the hearing, the City Council or its designee may take any of the following actions:

- (a) Take no action on the license;
- (b) Allow the business activity to continue but add reasonable conditions to the license;
 - 1. Convert the license to a provisional license and approve a mitigation plan;
 - 2. Suspend the license; or
 - 3. Revoke the license.

(3) *Findings.* Any actions taken following a hearing shall be adopted by resolution with findings and shall be sent to or served upon the licensee. If the license is suspended, the dates of suspension shall be fixed; if the license is revoked, the effective date of the revocation shall be fixed. The decision by the City Council or its designee following a hearing is final.

Section

Miscellaneous Business Regulations

- 111.01 Food vending
- 111.02 Courtesy benches
- 111.03 Building and related trades
- 111.04 Massage therapy
- 111.05 Motor vehicle related businesses
- 111.06 Body art establishments
- 111.07 Pawnbrokers and precious metal dealers
- 111.08 Sexually-oriented businesses
- 111.09 Peddlers, solicitors and transient merchants
- 111.10 Self-service laundry facilities
- 111.11 Lumber yards
- 111.12 Legal fireworks
- 111.13 Rubbish hauling license

Amusements and Amusement Devices

- 111.30 Outdoor live entertainment
- 111.31 Carnivals
- 111.32 Gambling

MISCELLANEOUS BUSINESS REGULATIONS**§ 111.01 FOOD VENDING.**

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

FOOD. Any raw, cooked or processed substance, beverage, water, ice or other ingredient used or intended for use in whole or in part for human consumption.

FOOD SELLER. Any person who operates any building, room, stand, enclosure, vehicle, space or area or other place where food is offered for retail sale with self-service, limited food preparation, or both. A microwave oven may be provided to heat purchased food. This section may be applied, but is not limited, to the following: gas stations, convenience stores, drug stores, bakers, butcher shops, candy shops/confectionaries, mobile food manufacturing or vending vehicle, grocery stores and health food stores.

RESTAURANT. Every building or structure kept, used, maintained, advertised or held out to the public to be a place where food is prepared and offered for retail sale with an on-site dining area.

(B) *Special conditions applicable to food sellers operating mobile food manufacturing or vending vehicles.* The following conditions only apply to food sellers operating mobile food manufacturing or vending vehicles.

- (1) Food vendors may sell only prepackaged, nonperishable or self-limiting packaged food.

(2) Food vendors must park the vehicle at least 30 feet from an intersection and must park the vehicle in such a manner so as to avoid creating a traffic hazard. All vehicles must be parked within one foot of the curb. Sales must be made on the curbside only.

(3) Food vendors must provide a covered garbage receptacle for customer use.

(4) Hours of operation are allowed from 7:00 a.m. until 10:00 p.m.

(5) Food vendors must comply with all applicable city ordinances relating to noise control and vehicle identification with regard to their mobile food manufacturing vehicles.

(2001 Code, § 605.01)

§ 111.02 COURTESY BENCHES.

(A) General provisions.

(1) *License required.* A person may not place or maintain a courtesy bench for the convenience of persons waiting for buses or for any other reason at any place in the city without obtaining a license pursuant to Chapter 110.

(2) *Application.* In addition to the requirements in Chapter 110, the person desiring the license must:

(a) Show the requested location and detailed plans and specifications of each proposed bench; and

(b) Be accompanied by a writing, signed by the owners or lessees of the property abutting the street upon which each bench is proposed to be located, giving their consent to the installation and maintenance of a bench at the proposed location. The applicant must also provide evidence of ownership or lease of the property on which the bench is to be located.

(3) *New license required when sold.* A separate license is required when a bench for which a license has been issued is sold or title or control is transferred or assigned.

(4) *Limit on licenses.* The city will grant no more than 50 courtesy bench licenses each year.

(B) Conditions of license.

(1) *Separate license for each bench.* A separate license is required for each bench.

(2) *Location.* No license shall be issued for the installation or maintenance of any bench:

(a) Without the approval of the Building Official and the Council;

(b) In any alley;

(c) At any location where the distance from the face of the curb to the inside sidewalk line is less than eight feet; or

(d) At any location distant more than 50 feet from the nearest point of intersection with a street, unless the Building Official approves.

(3) *Size and maintenance.*

(a) *Dimensions.* When a license is issued, the bench shall be installed parallel with the curb and set back at least 18 inches from the face of the curb. No bench may be more than 42 inches high, 30 inches wide, or seven feet long unless otherwise approved. Each bench must have the license number displayed in a conspicuous place.

(b) *Maintenance.* It is the duty of the licensee to maintain each bench at all times in a safe condition at its proper location and to inspect each bench periodically. Benches are to be kept in a neat, clean and usable condition. Ice and snow must be removed from the benches and the vicinity so that each bench is accessible at all times.

(c) *Signs.* No advertising matter or sign may be displayed upon any bench except upon the front and rear surfaces of the backrest. No liquor, beer or obscene, immoral or political advertising of any character is permitted, and all advertising is subject to the approval of the City Council. No advertising matter or sign on any bench shall display the words "Stop," "Look," "Drive in," "Danger" or any other word, phrase or symbol which might interfere with, mislead or distract traffic.

(C) *Denial of license.* In addition to the grounds enumerated in Chapter 110, the application for a courtesy bench license will be denied if the Building Official finds that the maintenance of the bench at the proposed location would tend unduly to obstruct passage

along any public sidewalk or public way, create a hazard, or be detrimental to the public safety or welfare.

(D) *Removal.* Upon the revocation or expiration of any license without renewal, if the licensee fails promptly to remove a bench, the Building Official may do so within ten days after written notice given by mail directed to the address of the licensee on file. If the licensee fails to pay the cost of removal and storage within 60 days after the notice is sent, the bench will be deemed abandoned; however, the abandonment does not relieve the licensee from the payment of the cost of removal and storage of the bench.

(2001 Code, § 805)

§ 111.03 BUILDING AND RELATED TRADES.

(A) Excavating.

(1) *Definition.* For purposes of this section, the term **EXCAVATING** has the following meaning:

(a) To grade or partial grade private property, in the process of which grading earth is moved to a location other than the premises being graded; or

(b) To remove or hollow out earth for the purpose of erecting a building.

(2) *Permit required.* No person shall engage in the business of excavating in the city without a permit pursuant to Chapter 32.

(3) *Conditions of the permit.*

(a) Before performing any work, an excavator must adequately protect all walks, curbs, boulevards and streets and upon the completion of the excavation, the excavator must immediately restore all walks, curbs, boulevards and streets to their former conditions.

(b) Hours of operation shall comply with § 133.01(G).

(c) The city may make inspections as necessary to determine that walks, curbs, boulevards, and streets, have been repaired and cleaned of refuse and debris caused by any excavation work. If cleaning and repairing has not been done, notice will be given to the permittee by registered mail. If the permittee fails to repair or clean the walks, curbs, boulevards or streets within ten days after notice, the city will perform the work and the expense will be charged against the permittee.

(B) *Compliance with §§ 150.035 through 150.046.* The evaluator must comply with all applicable provisions of §§ 150.035 through 150.046 related to rental dwellings.

(2001 Code, § 1115) (Ord. 07-01, passed - -; Ord. 12-13, passed - -)

§ 111.04 MASSAGE THERAPY.

(A) *Purpose.* The purpose of this article of the city code is to prohibit massage businesses and services to the public except those licensed as therapeutic massage businesses and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect businesses that are operating legitimate businesses, to prevent criminal activity and to protect the health and welfare of the community. The purpose of this section is not to impose restrictions or limitations on the freedom of protected speech or expression.

(B) *Findings of the City Council.* The City Council makes the following findings regarding the need to license therapeutic massage businesses and therapists and to prohibit all other types of massage businesses and services to the public:

(1) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.

(2) Health and sanitation regulations governing therapeutic massage businesses and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.

(3) Limiting the number of therapeutic massage business licenses and license qualifications for the restrictions on therapeutic massage businesses and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.

(4) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.

(5) Massage businesses which employ persons with no specialized and standardized training can tax law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.

(6) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

(C) *Definitions.* The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

ACCREDITED INSTITUTION. An educational institution holding accredited status with the United States Department of Education or Minnesota Office of Higher Education.

ACCREDITED PROGRAM. A professional massage program 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.

ISSUING AUTHORITY. The City Council.

MASSAGE. Any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, 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 massage to the public who can demonstrate to the issuing authority that he or she:

(a) Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;

(b) Is affiliated with, employed by, or owns a therapeutic massage business licensed by the city; and

(c) Provides proof that the applicant has met the academic requirements of the issuing authority by providing both of the following:

1. A certified copy of a transcript of academic record from an accredited program or accredited institution that has been approved by the issuing authority, sent directly from the program or institution to the issuing authority; and

2. A copy of the diploma or certificate of graduation from an accredited program or accredited institution that has been approved by the issuing authority, sent directly from the accredited program or institution to the issuing authority. The accredited program or accredited institution must confirm that the applicant has successfully completed at least 500 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 the same accredited program or accredited institution.

(d) In lieu of the academic requirement in division (c) above, the applicant may substitute providing proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork and a minimum of seven years of full-time work experience as a massage therapist within the United States. The applicant is still required to provide proof of divisions (a) and (b) above.

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 BUSINESS. An entity which operates a business which hires only therapeutic massage therapists licensed by the city to provide therapeutic massage to the public. The owner/operator of a therapeutic massage business need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A

THERAPEUTIC MASSAGE BUSINESS may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.

WITHIN THE CITY. Includes physical presence 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 of employees who respond to requests for services from within the city.

(D) *License required; number of licenses.*

(1) *Therapeutic massage business license.* It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage business license from the city pursuant to Chapter 110 and this section. The maximum number of business licenses issued by the city at any one time shall be three.

(2) *Massage therapist license.* It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the city without first having obtained a personal massage therapist license from the city pursuant to this section. The maximum number of personal massage therapist licenses issued by the city at any one time shall be 20.

(3) If the number of massage business licenses or personal licenses meets or exceeds the permitted number of licenses on the effective date of this section, no additional licenses shall be approved. Existing licenses may be renewed; however, should a license not be renewed, or if the license is revoked or lapses, the license shall not be reinstated.

(E) *Exceptions.* A therapeutic massage business or massage therapist license is not required for the following persons and places:

(1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.

(2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.

(3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry. Such persons shall only be authorized to practice on the business premises of the employer.

(4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.

(5) Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution and provided the students are identified to the public as students of massage therapy. Students of an accredited institution who are performing massage services at clinics or other facilities located outside of the accredited institution must have at least 150 hours of certified therapeutic massage training at the accredited institution prior to performing the therapy outside of the institution, must have proof of liability insurance, and must be identified to the public as a student of massage therapy.

(F) *License application.* In addition to the application information required by Chapter 110, all applicants shall comply with providing the following information:

(1) *Therapeutic massage business license application.* An application for a therapeutic massage business license shall be made on a form supplied by the City Clerk and shall request the following information:

(a) *All applicants.* For all applicants:

1. The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.

2. The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.

3. Whenever the application is for premises either planned or 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 on file with the city's building and inspection department, no plans need be submitted to the issuing authority.

4. The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.

5. All applications for licenses, whether business or individual applications, shall be signed and notarized. If the application is that of a natural person, it shall be signed and notarized by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial, suspension or revocation of the license.

6. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.

7. Such other information as the City Council shall require.

(b) *Individuals.* For applicants who are individuals:

1. Proof of whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.

2. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.

3. Names and addresses and contact information including phone numbers and email addresses of the applicant's employers for the preceding five years and dates for such employment.

4. Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the time, place and offense for each conviction.

5. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.

(c) *Partnerships.* For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in division (F)(1)(b) above. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minn. Stat. § 333.02, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.

(d) *Corporations and other organizations.* For applicants that are corporations or other types of organizations:

1. The name of the organization, and if incorporated, the state of incorporation.

2. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02.

3. The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in division (F)(1)(b) above.

4. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in division (F)(1)(b) above.

(2) *Massage therapist license application.* An application for a massage therapist license shall be made on a form supplied by the City Clerk and shall request the following information:

(a) The applicant's home telephone and cell phone number.

(b) The applicant's physical description, including weight, height, color of eyes, and color of hair. The applicant shall provide a color photocopy of the applicant's driver's license or state-issued I.D. front and back, or any other government-issued I.D.

(c) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for each conviction.

(d) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is

submitted to the issuing authority.

(e) Three names, resident and business addresses, and current contact information, including a phone number of those residents within the metropolitan area, of good moral character, not related to the applicant or financially interested in the premises of the business, who may be referred to attest to the applicant's character.

(f) Proof of whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.

(g) Proof that the applicant has met the definition of a massage therapist in division (C) above.

(h) Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.

(i) Whether the applicant has ever been engaged in the operation of massage services, and if so, furnish information as to the name, place, dates and length of time of the involvement in such an establishment.

(j) Such other information as the City Council shall require.

(G) *License fee.* The fees for a therapeutic massage business and therapist licenses shall be as set forth by City Council resolution. An investigation fee shall be charged for therapeutic massage business licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees.

(H) *License application investigation.* An investigation is required pursuant to § 110.03(C)(5). No investigation fee shall be refunded. Out of state investigations shall require the applicant to pay actual out-of-pocket expenses. A deposit for an out-of-state investigation shall be required in advance, pursuant to City Council resolution and the applicant shall be refunded any unused deposit upon completion of the investigation. The City Council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation, the Council shall approve or deny the license.

(I) *Inspections.*

(1) *Pre license inspection.* In the case of applications for massage therapy business licenses, the Police Department and Building Official must investigate the premises where the massage therapy business is to be carried on, for the purpose of ensuring that the premises comply with all the sanitation requirements in the section and with the regulations of public health, safety and welfare, pursuant to § 110.11. Licenses shall only be recommended for approval if they meet the safety and sanitary requirements of the city and of the Building Code regulations of the city and state.

(2) *Subsequent inspections.* In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public, the issuing authority, environmental health department or designee, and/or the Police Department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section. Any search of the licensed premises is subject to reasonableness standards as recognized by the courts; search warrants will be secured when applicable. Any entry into a private residence will require consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business.

(J) *Denial, suspension or revocation.* In addition to the grounds enumerated in § 110.12, the following reasons may be grounds for individual license or business license denial, suspension or revocation:

(1) The applicant has been convicted of criminal prostitution or similar sex offenses or to a partnership or corporation who has in its employ or is owned by any persons convicted of a similar criminal act; or

(2) The owner, manager, lessee or any of the employees are found to be in control or possession of any alcoholic beverages, narcotic drugs or controlled substances, as defined by state statutes, on the premises.

(3) If the holder of a business license fails to maintain with the issuing authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.

(4) A material variance in the actual plan and design of the premises from the plans submitted.

(K) *License restrictions.*

(1) *Posting of license.*

(a) *Business license.* A therapeutic massage business license issued must be posted in a conspicuous place on the premises for which it is used.

(b) *Personal massage therapist license.* An annual photo shall be required for a massage therapist license. A person licensed as a massage therapist shall post the massage therapist license, with color photo, in a conspicuous place on the premises at which the therapist is associated. A massage therapist shall have readily available at all times that therapeutic massage services are rendered, the photo identification card issued by the issuing authority. The photo identification card issued by the issuing authority must be presented to each client when providing massage therapy services off-site.

(2) *Licensed premises.*

(a) *Business license.* A therapeutic massage business license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk within ten business days.

(b) *Personal massage therapist license.* A massage therapist license shall entitle the licensed therapist to perform on-site massage at a business, public gathering, private home, or other site not on the therapeutic massage business premises. It shall be the continuing duty of each licensee to properly notify the City Clerk, within ten business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.

(3) *Affiliation with business required.* A massage therapist shall be employed by, affiliated with, or own a massage business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage business license in division (E) above.

(4) *Employment of unlicensed massage therapists prohibited.* No therapeutic massage business shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in division (E) above.

(5) *Coverage of genitals during massage.* The licensee shall require that the person who is receiving the massage shall at all times have his or her genitals covered with non-transparent material or clothing.

(6) *Therapist dress/uniform requirements.* Any therapist performing massage shall at all times be dressed professionally, including short sleeved shirts, skirts no shorter than three inches above the knees, no cleavage showing, nails trimmed and neat, hair pulled back and closed-toed shoes.

(7) *Massage of certain body parts prohibited.* At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

(8) *Restrictions regarding hours of operation.* No therapeutic massage business shall be open for business, nor will any therapeutic massage therapist offer massage services, before 8:00 a.m. or after 9:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after 9:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.

(9) *Proof of local residency required.* In the case of a therapeutic massage business, the licensee, managing partner, or manager of the licensed premise must show proof of residency in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin. In the case of therapeutic massage therapists, the licensee must show proof of residing in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin.

(10) *Posting of rates.* All massage businesses must post their rates for service in a prominent place in the entrance or lobby of the business.

(11) *Illegal activities.* In addition to the license restrictions set forth in this section, any advertising by a licensee of any potential unlawful or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.

(12) *Restrictions involving minors.* No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his or her parent or guardian.

(L) *Restrictions regarding sanitation, health and safety.*

(1) *Toilet room requirements.* A licensed therapeutic massage business shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately

lighted.

(2) *Paper/linen requirements.* A licensed therapeutic massage business shall provide single- service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture shall be properly sanitized after each massage.

(3) *Washing of hands required.* The approved licensed business premises for the compact and contiguous space described and submitted in division (K)(2) above shall contain an on-site sink. The massage therapist shall 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.

(4) *Door latches and locks.* Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.

§ 111.05 MOTOR VEHICLE RELATED BUSINESSES.

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

MOTOR VEHICLE. Every vehicle that is self-propelled. **MOTOR VEHICLE** does not include a vehicle that moves solely by human power.

MOTORCYCLE. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and bicycles with a motor attached.

(2001 Code, § 1110.01)

(B) *Motorcycle sales.*

(1) *License required.* No person shall engage in selling motorcycles, either exclusively or in connection with any other occupation without being licensed pursuant to Chapter 110.

(2) *Conditions of the license.* All of the display and sales of motorcycles must be within an enclosed building.

(2001 Code, § 1110.03)

(C) *Motorcycle rentals.*

(1) *License required.* No person, firm or corporation shall engage in the business of renting, leasing or furnishing of motorcycles for pay or hire without being licensed pursuant to Chapter 110.

(2) *Application.* In addition to the application requirements in Chapter 110, the application must contain the number of motorcycles to be used in the business and the number on the state license plate of each motorcycle.

(3) *Rental to licensed vehicle operators; records.* A licensee shall not rent, lease or furnish a motorcycle to any person who is not licensed to operate such a vehicle. It shall be unlawful to rent, lease or furnish for pay or hire any motorcycle to a person under the age of 18 years unless a parent furnishes a statement in writing showing the consent of the person's parent or guardian to the rental, lease or furnishing for hire of a motorcycle, the licensee shall make a permanent and legible record containing the name, address and age of the person to whom the motorcycle is leased, rented or furnished and shall record on this record the number and date of issue and expiration of the driver's license together with any limitations noted and the description of the person as stated on the driver's license. The record so kept shall also identify the vehicle rented, leased or furnished to the person by the number on the vehicle's state license plate.

(4) *Safety regulations.* The licensee shall maintain in safe operating condition all motorcycles rented, leased or furnished. The licensee's agent or employees shall explain the operation including, but not limited to, the controls, pedals, gears and brakes of the particular vehicle to be used by the person before the person uses it unless the licensee, agent or employee is aware that the person knows how to operate the particular vehicle. The licensee shall make available for each operator of the vehicle leased, rented or furnished for hire at least one sanitized safety helmet or similar headgear to be offered for the use of the driver.

(5) *Subleasing vehicle.* It is unlawful for any person to whom a motorcycle is rented, leased or furnished to then sublease, rent or otherwise authorize the use of the vehicle to a person who is not licensed to operate such a vehicle.

(6) *Driving regulations.* Minn. Stat. § 169.974, as it may be amended from time to time, regarding driving regulations for motorcycles is adopted by reference.

(2001 Code, § 1110.05)

(D) *Motor vehicle sales and rental.*

(1) *State licensing law adopted by reference.* Minn. Stat. § 168.27, as it may be amended from time to time, is adopted by reference.

(2) *State license required.* No person shall engage in the following businesses without a current state and city license:

- (a) New motor vehicle dealer;
- (b) Used motor vehicle dealer;
- (c) Motor vehicle lessor;
- (d) Motor vehicle broker;
- (e) Motor vehicle wholesaler; or
- (f) Motor vehicle auctioneer.

(3) *Certificate.* Every person holding the license shall file a copy of the current state certificate of license with the City Clerk.

(4) *Investigation.* An investigation is required pursuant to § 110.03(C)(5).

(2001 Code, § 1110.07)

(E) *Car washes.*

(1) *License required.* No person shall operate a car wash without a license pursuant to Chapter 110.

(2) *Conditions of the license.* The operation of every car wash is subject to curtailment or suspension when the city must conserve water for essential uses.

(2001 Code, § 1110.09)

(F) *Automobile service stations.*

(1) *License required.* No person shall engage in the business of keeping, maintaining or operating any gasoline service station without a license pursuant to Chapter 110.

(2) *Application.* In addition to the application requirements in Chapter 110, the applicant must file a plan of the station and the receptacles and tanks provided for the holding and storage of gasoline and other oils.

(2001 Code, § 1110.11)

(Ord. 11-14, passed - -)

§ 111.06 BODY ART ESTABLISHMENTS.

(A) *Purpose.* It is the purpose and intent of this section to establish standards and regulations relating to the practice of body art in order to prevent the transmission of communicable diseases and promote the general welfare of the public.

(B) *Exemptions.* The following individuals may perform body art procedures within the scope of their practice without a technician's license:

- (1) A physician licensed under Minn. Stat. Chapter 147, as it may be amended from time to time;
- (2) A nurse licensed under Minn. Stat. §§ 148.171 to 148.285, as they may be amended from time to time;
- (3) A chiropractor licensed under Minn. Stat. Chapter 148, as it may be amended from time to time;

- (4) An acupuncturist licensed under Minn. Stat. Chapter 147B, as it may be amended from time to time;
- (5) A physician's assistant licensed under Minn. Stat. Chapter 147A, as it may be amended from time to time;
- (6) A dental professional licensed under Minn. Stat. Chapter 150A, as it may be amended from time to time;
- (7) A guest artist under Minn. Stat. § 146B.04, as it may be amended from time to time, may perform body art procedures in accordance with the requirements of Minn. Stat. § 146B.04, as it may be amended from time to time; or
- (8) A person piercing only the outer perimeter or lobe of the ear using a pre sterilized single use stud and clasp ear piercing system.

(C) *Prohibitions.* No person shall:

- (1) Conduct branding, cutting, subdermal implantation, microdermal, transdermal, suspension, tongue bifurcation or scarification of another person;
- (2) Tattoo a minor;
- (3) Pierce or tattoo the genitalia or nipples of a minor;
- (4) Practice tattooing or piercing while under the influence of alcohol, controlled substances as defined in Minn. Stat. § 152.01(4), as it may be amended from time to time, or hazardous substances as defined in the rules adopted under Minn. Stat. Chapter 182, as it may be amended from time to time; or
- (5) Operate a body art establishment or perform body art procedures, unless exempted above, without a license.

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

AFTERCARE. Written instructions given to a client, specific to the procedure rendered, on caring for the body art and surrounding area. These instructions must include information on when to seek medical treatment.

ANTISEPTIC. An agent that destroys disease causing microorganisms on human skin or mucosa.

BODY ART or **BODY ART PROCEDURES.** Physical body adornment using, but not limited to, tattooing and body piercing. **BODY ART** does not include practices and procedures that are performed by a licensed medical or dental professional if the procedure is within the professional's scope of practice.

BODY ART ESTABLISHMENT or **ESTABLISHMENT.** Any structure or venue, whether permanent, temporary or mobile, where body art is performed. Mobile establishments include vehicle mounted units, either motorized or trailered, and readily moveable without disassembling and where body art procedures are regularly performed in more than one geographic location.

BODY PIERCING. The penetration or puncturing of the skin by any method for the purpose of inserting jewelry or other objects in or through the body. **BODY PIERCING** also includes branding, scarification, suspension, subdermal implantation, microdermal and tongue bifurcation. **BODY PIERCING** does not include the piercing of the outer perimeter or the lobe of the ear using a pre-sterilized single-use stud-and-clasp ear-piercing system.

BRANDING. An indelible mark burned into the skin using instruments of thermal cautery, radio frequency and strike branding.

CITY. The City of West St. Paul.

COMMISSIONER. The Commissioner of Health.

CONTAMINATED WASTE. Any liquid or semi liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; and sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 C.F.R. § 1910.1030, known as "occupational exposure to blood borne pathogens."

DEPARTMENT. The Department of Health.

EQUIPMENT. All machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in the operation of a body art establishment.

GUEST ARTIST. An individual who performs body art procedures according to the requirements under division (H) below.

HAND SINK. A sink equipped with potable hot and cold water held under pressure, used for washing hands, wrists, arms or other portions of the body.

HOT WATER. Water at a temperature of at least 110°F.

JEWELRY. Any ornament inserted into a pierced area.

LIQUID CHEMICAL GERMICIDE. A tuberculocidal disinfectant or sanitizer registered with the Environmental Protection Agency.

MICRODERMAL. A single point perforation of any body part other than an earlobe for the purpose of inserting an anchor with a step either protruding from or flush with the skin.

MICROPIGMENTATION OR COSMETIC TATTOOING. The use of tattoos for permanent makeup or to hide or neutralize skin discolorations.

OPERATOR. Any person who controls, operates or manages body art activities at a body art establishment and who is responsible for the establishment's compliance with these regulations, whether or not the person actually performs body art activities.

PROCEDURE AREA. The physical space or room used for conducting body art procedures.

PROCEDURE SURFACE. The surface area of furniture or accessories that may come into contact with the client's clothed or unclothed body during a body art procedure and the area of the client's skin where the body art procedure is to be performed and the surrounding area, or any other associated work area requiring sanitizing.

SCARIFICATION. An indelible mark fixed on the body by the production of scars.

SHARPS. Any object, sterile or contaminated, that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized single-use needles, scalpel blades and razor blades.

SHARPS CONTAINER. A closed, puncture-resistant, leak-proof container, labeled with the international biohazard symbol, that is used for handling, storage, transportation and disposal.

SINGLE USE. Products or items intended for one-time use which are disposed of after use on a client. This definition includes, but is not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, disposable razors, piercing needles, tattoo needles, scalpel blades, stencils, ink cups and protective gloves.

STERILIZATION. A process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

SUBDERMAL IMPLANTATION. The implantation of an object entirely below the dermis.

SUPERVISION. The physical presence of a technician licensed under this section while a body art procedure is being performed.

SUSPENSION. The suspension of the body from affixed hooks placed through temporary piercings.

TATTOOING. Any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. **TATTOOING** also includes micro pigmentation and cosmetic tattooing.

TECHNICIAN or **BODY ART TECHNICIAN.** Any individual who is licensed under this section as a tattoo technician or as a body piercing technician or as both.

TEMPORARY BODY ART ESTABLISHMENT. Any place or premise operating at a fixed location where an operator performs body art procedures for no more than 21 days in conjunction with a single event or celebration.

TONGUE BIFURCATION. The cutting of the tongue from the tip to the base, forking at the end.

(E) *License requirements.*

(1) *General rule.* No person acting individually or jointly with any other person may maintain, own or operate a body art establishment in the city without being licensed by the city pursuant to Chapter 110. The city will issue no more than two body art establishment licenses at any time.

(2) *Application.* Each application for an initial establishment license and for renewal must comply with § 110.03, as well as all requirements of this section.

(3) *Investigation.* An investigation is required pursuant to § 110.12(E). In the event an establishment adds an additional service at a different time than the original license application or any renewal application, an additional investigation fee shall be required to ensure compliance with this section.

(4) *Inspection.*

(a) *Inspection.* A pre-license inspection is required pursuant to § 110.11.

(b) *Access to premises.* The operator of the body art establishment shall, upon request of the city, permit city employees access to all parts of the establishment at any reasonable time for the purpose of inspection. The operator shall allow review of any records necessary for the city to ascertain compliance with this section.

(c) *Interference with city employees.* No person shall interfere with or hinder the city in the performance of its duties, or refuse to permit any city employee to make the inspections.

(5) *Drawing of premises.* The applicant shall submit a scaled drawing of the premises with the license application. If the licensed premises is enlarged, altered or extended, the licensee shall inform the city and provide an amended drawing.

(6) *Locations and persons ineligible for a license.*

(a) No license under this section shall be issued for a location:

1. That is a temporary body art establishment or mobile establishment;
2. That is located in a private residence;
3. That is licensed to sell intoxicating liquor, non intoxicating liquor or is licensed as a sexually-oriented business;
4. That is not a compact and contiguous space specified in the approved license application;

5. On which taxes, assessments or other financial claims of the state, county, school district or city are due, delinquent or unpaid. In the event a suit has been commenced under Minn. Stat. §§ 278.01 through 278.03, as they may be amended from time to time, questioning the amount or validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one year after becoming due; and/or

6. That is not properly zoned or does not have approved building permits, if required.

(b) No license shall be issued to an applicant or an officer, director, partner or manager of body art establishment who is:

1. Is a minor at the time the application is filed; or
2. Is not a citizen of the United States, a resident alien or does not have the legal authority to be employed in the United States.

(7) *Hours of operation.* A licensed premises shall not be open for business before 7:00 a.m. or after 11:00 p.m.

(8) *Transfer of license.* A body art establishment license must be issued to a specific person and/or entity and for a specific location. It is not transferable.

(9) *Records.* The following information must be kept on file for three years on the premises of the establishment and must be made available for inspection upon request by the city:

(a) A description of all body art procedures performed by the establishment;

(b) Copies of the spore tests conducted on each sterilizer;

(c) The following information for each technician or guest artist employed or performing body art procedures in the establishment:

1. Name;
2. Home address;

3. Home telephone number;
4. Date of birth;
5. Copy of an identification photo; and
6. License number or guest artist license number.

(d) For each client, the body art establishment operator shall maintain proper records of each procedure. The records of the procedure must be kept for three years and must be available for inspection by the city upon request. The record must include the following:

1. The date of the procedure;
2. The information on the required picture identification showing the name, age and current address of the client;
3. A copy of the authorization form signed and dated by the client required under division (I)(2) below;
4. A description of the body art procedure performed;
5. The name and license number of the technician performing the procedure;
6. A copy of the consent form required under division (I)(4) below; and

7. If the client is under the age of 18 years, a copy of the consent form signed by the parent or legal guardian as required under division (I)(3)(a) below.

(10) *Insurance.*

(a) *Professional liability insurance.* All licensees shall have at all times a valid certificate of insurance issued by an insurance company licensed to do business in the state indicating that the licensee has current coverage of professional liability insurance in the amount of at least \$1,000,000.

(b) *Worker's compensation insurance.* All licensees shall provide the city with proof of worker's compensation insurance as required by Minn. Stat. § 176.182, as it may be amended from time to time, for all its employees.

(F) *Body art technicians.*

(1) No individual may perform tattooing unless the individual holds a valid tattoo technician license issued by the Commissioner of Health under Minn. Stat. § 146B.03, as it may be amended from time to time, except as provided in division (B) above.

(2) No individual may perform body piercing unless the individual holds a valid body piercing technician license issued by the Commissioner of Health under Minn. Stat. § 146B.03, as it may be amended from time to time, except as provided in division (B) above.

(3) If an individual performs both tattooing and body piercing, the individual must hold a valid dual body art technician license.

(G) *Denial, suspension or revocation of license.*

(1) Grounds for denial, suspension or revocation. In addition to the grounds stated in § 110.12(B), any license may be denied, suspended or revoked if any of the following conditions exist and the owner or operator of a licensed establishment may be ordered by the city to discontinue all operations of a licensed body art establishment:

- (a) Evidence of a sewage backup in an area of the body art establishment where body art activities are conducted;
- (b) Lack of potable, plumbed or hot or cold water to the extent that hand washing or toilet facilities are not operational;
- (c) Lack of electricity or gas service to the extent that hand washing, lighting or toilet facilities are not operational;
- (d) Significant damage to the body art establishment due to tornado, fire, flood or another disaster;
- (e) Evidence of an infestation of rodents or other vermin;
- (f) Evidence of any individual performing a body art procedure without a license as required under this section;
- (g) Evidence of existence of a public health nuisance;

- (h) Use of instruments or jewelry that are not sterile;
- (i) Failure to maintain required records;
- (j) Failure to use gloves as required;
- (k) Failure to properly dispose of sharps, blood or body fluids, or items contaminated by blood or body fluids;
- (l) Failure to properly report complaints of potential blood borne pathogen transmission to the Commissioner;
- (m) Evidence of a positive spore test on the sterilizer if there is no other working sterilizer with a negative spore test in the establishment;
- (n) The correct license fee has not been tendered to the city and, in the case of a check or bank draft, honored with payment upon presentation;
- (o) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the city's business, zoning and health regulations;
- (p) The applicant has operated a tattoo or body piercing establishment and has had a license denied, revoked or suspended for any of the cases given in this section by the city or any other state or local agency within five years prior to the date of the application;
- (q) The applicant, owner or operator has been convicted of any crime directly related to the business licensed and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed business as prescribed by Minn. Stat. § 364.03(3), as it may be amended from time to time;
- (r) The applicant, owner or operator denies access to city or state officials who are attempting to determine compliance with the city code;
- (s) The applicant is not of good moral character or repute; or
- (t) Other good cause.

(2) *Hearing.* The City Council or its designee may hold a hearing to take action on an establishment license pursuant to § 110.12(D).

(H) *Health and safety standards.*

(1) *Establishment standards.* The body art establishment must meet the health and safety standards in this division (H) before a licensed technician may conduct body art procedures at the establishment.

- (a) There shall be no less than 45 square feet of floor space for each procedure area. 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.
- (b) For clients requesting privacy, at a minimum, a divider, curtain or partition must be provided to separate multiple procedure areas.
- (c) All procedure surfaces must be smooth, nonabsorbent and easily cleanable.
- (d) The establishment must have an accessible hand sink that is not in a public restroom and is equipped with:
 1. Hot and cold running water under pressure;
 2. No touch faucet controls such as wrist or foot operated;
 3. Liquid hand soap;
 4. Single-use paper towels or a mechanical hand drier or blower;
 5. A nonporous washable garbage receptacle with a foot-operated lid or with no lid and a removable liner; and
 6. A sign reminding technicians to properly wash their hands.
- (e) The establishment must have at least one available bathroom equipped with a toilet and hand lavatory. The hand lavatory shall be supplied with:

1. Hot and cold running water under pressure;
2. Liquid hand soap;
3. Single-use paper towels or a mechanical hand drier or blower;
4. A garbage receptacle;
5. A door that closes; and
6. Adequate ventilation.

(f) Ceilings in the body art establishment must be in good condition.

(g) All walls and floors must be free of open holes or cracks and be washable and no carpeting may be in areas used for body art procedures unless the carpeting is entirely covered with a rigid, nonporous, easily cleanable material.

(h) All facilities within the establishment must be maintained in a clean and sanitary condition and in good working order.

(i) No animals may be present during a body art procedure, unless the animal is a service animal.

(2) *Standards for equipment, instruments and supplies.* Equipment, instruments and supplies must comply with the health and safety standards in this section before a licensed technician may conduct body art procedures.

(a) Jewelry used as part of a body art procedure must be made of surgical implant-grade stainless steel, solid 14-karat or 18-karat white or yellow gold, niobium, titanium or platinum or a dense low-porosity plastic. Use of jewelry that is constructed of wood, bone or other porous material is prohibited.

(b) Jewelry used as part of a body art procedure must be free of nicks, scratches or irregular surfaces and must be properly sterilized before use.

(c) Reusable instruments must be thoroughly washed to remove all organic matter, rinsed and sterilized before and after use.

(d) Needles must be single-use needles and sterilized before use.

(e) Sterilization must be conducted using steam heat or chemical vapor.

(f) All sterilization units must be operated according to the manufacturer's specifications.

(g) At least once a month, but not to exceed 30 days between tests, a spore test must be conducted on each sterilizer used to ensure proper functioning. If a positive spore test result is received, the sterilizer at issue may not be used until a negative result is obtained.

(h) All inks and other pigments used in a body art procedure must be specifically manufactured for tattoo procedures.

(i) Immediately before applying a tattoo, the ink needed must be transferred from the ink bottle and placed into single use paper or plastic cups. Upon completion of the tattoo, the single-use cups and their contents must be discarded.

(j) All tables, chairs, furniture or other procedure surfaces that may be exposed to blood or body fluids during the body art procedure must be cleanable and must be sanitized after each client with a liquid chemical germicide.

(k) Single-use towels or wipes must be provided to the client. These towels must be dispensed in a manner that precludes contamination and disposed of in a nonporous washable garbage receptacle with a foot-operated lid or with no lid and a removal liner.

(l) All bandages and surgical dressings used must be sterile or bulk packaged clean and stored in a clean, closed nonporous container.

(m) All equipment and instruments must be maintained in good working order and in a clean and sanitary condition.

(n) All instruments and supplies must be stored clean and dry in covered containers.

(o) Single-use disposable barriers or a chemical germicide must be used on all equipment that cannot be sterilized as part of the procedure as required under this section including, but not limited to, spray bottles, procedure light fixture handles and tattoo machines.

(3) *Standards for body art procedures.* All body art procedures must comply with the health and safety standards in this section.

(a) The skin area subject to a body art procedure must be thoroughly cleaned with soap and water, rinsed thoroughly and swabbed with an antiseptic solution. Only single-use towels or wipes may be used to clean the skin.

(b) Whenever it is necessary to shave the skin, a new disposable razor must be used for each client. The disposable razor must be discarded after use.

(c) No body art procedure may be performed on any area of the skin where there is an evident infection, irritation or open wound.

(d) Glove use.

1. Single-use nonabsorbent gloves of adequate size and quality to preserve dexterity must be used for touching clients, for handling sterile instruments or for handling blood or body fluids.

2. Non-latex gloves must be used with clients or employees who request them or when petroleum products are used.

3. Gloves must be changed if a glove becomes damaged or comes in contact with any non clean surface or objects or with a third person.

4. At a minimum, gloves must be discarded after the completion of a procedure on a client.

5. Hands and wrists must be washed before putting on a clean pair of gloves and after removing a pair of gloves.

6. Gloves shall not be reused.

(4) *Standards for technicians.* Technicians must comply with the health and safety standards in this section.

(a) Technicians must scrub their hands and wrists thoroughly before and after performing a body art procedure, after contact with the client receiving the procedure, and after contact with potentially contaminated materials.

(b) A technician may not smoke, eat or drink while performing body art procedures.

(c) A technician may not perform a body art procedure if the technician has any open sores visible or in a location that may come in contact with the client.

(d) Technicians shall wear clean clothing and use a disposable barrier such as a lap cloth when performing body art procedures.

(e) For each client, single-use disposable barriers shall be provided on all equipment used as part of a procedure that cannot be sterilized. Examples include spray bottles, light fixture handles and tattoo machines.

(f) Technicians shall not allow clients to leave the procedure area without first covering the tattooed area with a bandage or other clean covering.

(5) *Contamination standards.*

(a) Infectious waste and sharps must be managed according to Minn. Stat. §§ 116.76 to 116.83, as they may be amended from time to time, and must be disposed of by an approved infectious waste hauler at a site permitted to accept the waste, according to Minn. Rules 7035.9100 to 7035.9150. Sharps ready for disposal must be disposed of in an approved sharps container.

(b) Contaminated waste that may release liquid blood or body fluids when compressed or that may release dried blood or body fluids when handled must be placed in an approved red bag that is marked with the international biohazard symbol.

(c) Contaminated waste that does not release liquid blood or body fluids when compressed or handled may be placed in a covered receptacle and disposed of through normal approved disposal methods.

(d) Storage of contaminated waste on site must not exceed the period specified by 29 C.F.R. § 1910.1030.

(I) *Professional standards.*

(1) *Proof of age.* A technician shall require proof of age before performing any body art procedure on a client. Proof of age must be established by one of the following methods:

(a) A valid driver's license or identification card issued by the state or another state that includes a photograph and date of birth of the individual;

- (b) A valid military identification card issued by the United States Department of Defense;
- (c) A valid passport;
- (d) A resident alien card; or
- (e) A tribal identification card.

(2) *Disclosure and authorization form.*

(a) Before performing any body art procedure, the technician must provide the client with a disclosure and authorization form that indicates whether the client has:

- 1. Diabetes;
- 2. A history of hemophilia;
- 3. A history of skin diseases, skin lesions or skin sensitivities to soap or disinfectants;
- 4. A history of epilepsy, seizures, fainting or narcolepsy;
- 5. Any condition that requires the client to take medications such as anticoagulants that thin the blood or interfere with blood clotting; or
- 6. Any other information that would aid the technician in the body art procedure process evaluation.

(b) The form must include a statement informing the client that the technician shall not perform a body art procedure if the client fails to complete or sign the disclosure and authorization form, and the technician may decline to perform a body art procedure if the client has any identified health conditions.

(c) The technician shall ask the client to sign and date the disclosure and authorization form confirming that the information listed on the form is accurate.

(3) *Minors; parent or legal guardian consent; prohibitions.*

(a) A technician may perform body piercings on an individual under the age of 18 if the individual's parent or legal guardian is present and a consent form under division (I)(4) below and the authorization form under division (I)(2) above is signed by the parent or legal guardian in the presence of the technician, and the piercing is not prohibited under division (I)(3)(c) below.

(b) No technician shall tattoo any individual under the age of 18 regardless of parental or guardian consent.

(c) No nipple or genital piercing, branding, scarification, suspension, subdermal implantation, microdermal or tongue bifurcation shall be performed by any technician on any individual under the age of 18 regardless of parental or guardian consent.

(d) No technician shall perform body art procedures on any individual who appears to be under the influence of alcohol, controlled substances as defined in Minn. Stat. § 152.01(4), as it may be amended from time to time, or hazardous substances as defined in rules adopted under Minn. Stat. Chapter 182, as it may be amended from time to time.

(e) No technician shall perform body art procedures while under the influence of alcohol, controlled substances as defined under Minn. Stat. § 152.01(4), as it may be amended from time to time, or hazardous substances as defined in the rules adopted under Minn. Stat. Chapter 182, as it may be amended from time to time.

(f) No technician shall administer anesthetic injections or other medications.

(4) *Consent form.* Before performing a body art procedure, the technician shall obtain from the client a signed and dated informed consent form. The consent form must disclose:

(a) That a tattoo is considered permanent and may only be removed with a surgical procedure and that any effective removal may leave scarring; or

(b) That body piercing may leave scarring.

(5) *Personal privacy.* Before performing any body art procedure, the technician shall offer and make available to the client personal draping, as appropriate.

(6) *Aftercare instructions.* A technician shall provide each client with verbal and written instructions for the care of the tattooed

or pierced site upon the completion of the procedure. The written instructions must advise the client to consult a health care professional at the first sign of infection.

(7) *State and local public health regulations.* An operator and technician shall comply with all applicable state, county and municipal requirements regarding public health.

(8) *Notification.* The operator of the body art establishment shall immediately notify the Commissioner and the local health authority of any reports of a potential blood-borne pathogen transmission.

§ 111.07 PAWNBROKERS AND PRECIOUS METAL DEALERS.

(A) Purpose.

(1) The City Council finds that pawnbrokers and precious metal dealers potentially provide an opportunity for the commission of crimes and their concealment because these businesses have the ability to receive and transfer stolen property quickly and easily. The City Council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers and precious metal dealers. The City Council further finds that the pawnbroker and precious metal industries have outgrown the city's current ability to effectively or efficiently identify criminal activity related to pawnshops and precious metal dealers. The purpose of this section is to prevent pawnbroker and precious metal businesses from being used as facilities for the disposition of illegally-obtained property, to aid in the identification of individuals involved in criminal activities through the timely collection and sharing of transaction information, and to ensure that the businesses comply with basic consumer protection standards, thereby protecting the public health, safety and general welfare of the citizens of the city.

(2) To help the Police Department better regulate current and future pawnbroker and precious metal businesses, decrease and stabilize costs associated with the regulation of the pawnbroker and precious metal industries, and increase identification of criminal activities in the pawnbroker and precious metal industries through the timely collection and sharing of pawnbroker and precious metal transaction information, this section also implements and establishes the required use of the Automated Pawn System (APS).

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

BILLABLE TRANSACTION. A reportable transaction conducted by a pawnbroker or precious metal dealer except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee's possession, voided transactions and confiscations.

ITEM CONTAINING PRECIOUS METAL. An item made in whole or in part of metal and containing more than 1% by weight of silver, gold or platinum.

LICENSEE. The person to whom a license is issued under this section, including any employees or agents of the person.

PAWNBROKER. A person engaged in whole or in part in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. Notwithstanding the foregoing, the following are exempt from this definition: any bank, savings and loan association, or credit union.

PAWNSHOP. The location at which or premises in which a pawnbroker regularly conducts business.

PERSON. An individual, partnership, corporation, limited liability company, joint venture, trust, association or any other legal entity, however organized.

PRECIOUS METAL. Silver, gold, platinum or sterling silver, whether as a separate item or in combination, or as a piece of jewelry or other crafted item, except items plated with precious metal or metals when the plating equals less than 1% of the item's total weight.

PRECIOUS METAL DEALER. A person engaging in the business of buying secondhand items containing precious metals, including, but not limited to, coins, jewelry, watches, eating utensils, candlesticks and religious and decorative objects.

REPORTABLE TRANSACTION. Every transaction conducted by a pawnbroker or precious metal dealer in which items are received through a pawn, purchase, consignment or trade, or in which a pawn is renewed, extended or redeemed, except:

(a) 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 the merchandise, provided the pawnbroker maintains a record describing the items in each transaction and marks each item in a manner that relates it to the particular transaction record; and

(b) Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

SECONDHAND ITEM. Tangible personal property, excluding a motor vehicle, that has been previously used, rented, owned or leased.

(C) *License required.*

(1) *General rule.* No person shall engage in the business of pawnbroker or precious metal dealer within the city unless the person is currently licensed under this section, and in the case of a precious metal dealer, a license must be obtained from both the county and the city. The city license must be obtained pursuant to Chapter 110.

(2) *Dual licenses required.* A person conducting both pawnbroker and precious metal dealer activity at the same location shall be required to obtain both a pawnbroker's license and a precious metal dealer's license. Only the license fee for a pawnbroker license shall be required. The license fee for the precious metal dealer license shall be waived.

(3) *Number of licenses issued.* The maximum allowable number of pawnbroker licenses at any one time shall be one. The maximum number of allowable precious metal dealer licenses at any one time shall be six.

(4) *License transfer not allowed.* Each license issued under this section shall be issued to a specific person and for a specific location. The license is not transferable.

(5) *Investigation.* Prior to issuance of a pawnbroker or precious metal dealer license, an application and investigation is required pursuant to § 110.03. An applicant applying for both licenses shall only be required to pay one background investigation fee. If there is a manager in charge of the business, the manager must also undergo a background investigation. A separate fee shall be required for each background investigation conducted.

(6) *License display.* The licensee must display a sign of sufficient size and in a location that makes it visible to all patrons which informs all patrons that all pawn and precious metal transactions are reported to the Police Department.

(D) *Exemptions.*

(1) The following persons shall be exempt from the licensing requirements regarding precious metal dealers:

(a) Transactions at occasional "garage" or "yard" sales, or estate sales or farm auctions held at the decedent's residence, except that precious metal dealers must comply with the requirements of Minn. Stat. §§ 325F.734 to 325F.742, as they may be amended from time to time, for these transactions;

(b) Transactions regulated by Minn. Stat. Chapter 80A, as it may be amended from time to time;

(c) Transactions regulated by the Federal Commodity Futures Commission Act, Pub. L. No. 93 463;

(d) Transactions involving the purchase of precious metal grindings, filings, slag, sweeps, scraps or dust from a dental lab, dentist or agent thereof;

(e) Transactions involving the purchase of precious metal grindings, filings, slag, sweeps, scraps or dust from an industrial manufacturer with whom the precious metal dealer has a contractual relationship;

(f) Transactions in which a secondhand item containing precious metal is exchanged for a new item containing precious metal and the value of the new item exceeds the value of the secondhand item, except that a natural person, partnership or corporation who is a precious metal dealer by engaging in a transaction that is not exempted by this section must comply with the requirements of Minn. Stat. §§ 325F.734 to 325F.742, as they may be amended from time to time;

(g) Transactions between precious metal dealers if both dealers are licensed under Minn. Stat. § 325F.733, as it may be amended from time to time, or if the seller's business is located outside of the state and the item is shipped from outside the state to a dealer licensed under Minn. Stat. § 325F.733, as it may be amended from time to time;

(h) Transactions in which the buyer of a secondhand item containing precious metal is engaged primarily in the business of buying and selling antiques, and the items are resold in an unaltered condition except for repair, and the items are resold at retail, and the buyer paid less than \$2,500 for secondhand items containing precious metals purchased within any period of 12 consecutive months; and

(i) Transactions in which the secondhand item containing precious metal is exchanged for an in store credit to be used only for merchandise offered for sale at the business where the transaction occurs.

(2) The following persons shall be exempt from the licensing requirements for pawnbrokers:

(a) Persons selling used personal property or items in connection with an occasional "garage" or "yard" sale, estate sale or farm auction;

(b) Repurchasers of agricultural machinery or implements pursuant to Minn. Stat. §§ 325E.05 and 325E.06, as they may be amended from time to time;

(c) Recyclers, including but not limited to motor oil, aluminum, iron, scrap metal, glass, plastic and paper recyclers;

(d) Dealers of used motor vehicles;

(e) Retail stores in connection with the repurchase of returned merchandise by a customer after the initial retail sale from the retail store;

(f) Dealers of secondhand items for consignment or for resale only;

(g) Dealers of wire and cable pursuant to Minn. Stat. § 325E.21, as it may be amended from time to time;

(h) Persons making occasional private purchases or sales of secondhand items;

(i) Licensed auctioneers;

(j) Retail or wholesale businesses who purchase secondhand items as part of payment, in full or a portion thereof, for new goods or personal property purchases from the business when the business transactions are incidental to and not the primary business; and

(k) Banks, savings and loan associations or credit unions.

(E) *Persons and locations ineligible for a license.*

(1) In addition to the grounds enumerated in § 110.05, no license shall be issued to an applicant if:

(a) The applicant, general partner, managing partner of a partnership, or manager, proprietor or agent in charge of a business or a corporation holds an intoxicating liquor license under §§ 112.01 through 112.07;

(b) The person is not of good moral character and repute;

(c) In the judgment of the City Council, the person is not the real party in interest or beneficial owner of the business operated under the license; or

(d) The person has had a pawnbroker or precious metal dealer's license issued by any governmental authority revoked anywhere within five years of the license application.

(2) A licensee is only authorized to carry on its business at the permanent place of business designated in the license. No building other than that mentioned in the license application may be used in conjunction with the licensed business. No off site storage facilities shall be allowed.

(3) No license may be issued for a place or business ineligible for a license under city ordinance or state law.

(4) No license may be issued for a place or business that holds a liquor license.

(5) No license may be granted for operation on a premises for which taxes, assessments or other financial claims of the city or any other governmental entity are delinquent and unpaid.

(F) *General license restrictions and conditions.*

(1) *Conduct.* Every licensee is responsible for the conduct of his or her place of business and the conditions of order in it. The act of any employee of the licensed premises is deemed the act of the licensee as well, and the licensee will be liable for all penalties provided by this section equally with the employee, except for criminal penalties.

(2) *Zoning requirements met.* No pawnbroker or precious metal dealer license shall be granted until all applicable zoning requirements are met or until all conditions for approval of the use have been satisfied.

(3) *Gambling.* No licensee under this section may keep, possess, operate or permit the keeping, possession or operation of dice, slot machines, roulette wheels, punchboards, blackjack tables or pinball machines that return coins or slugs, chips or tokens of any kind, which are redeemable for merchandise or cash. No gambling equipment authorized under Minn. Stat. §§ 349.11 through 349.61, as they may be amended from time to time, may be kept or operated and no raffles may be conducted on the licensed premises and/or adjoining rooms. The purchase of lottery tickets may take place on the licensed premises as authorized by the director of the lottery pursuant to Minn. Stat. §§ 349A.01 through 349A.15, as they may be amended from time to time.

(4) *Hours of operation.* Monday through Saturday, a licensee may not be open for business before 7:00 a.m. or after 9:00 p.m. On Sundays, a licensee may not be open for business before 11:00 a.m. or after 6:00 p.m. A licensee may not be open for business on Thanksgiving Day or Christmas Day.

(5) *Stolen or lost property.* A pawnbroker or precious metal dealer must report to the Police Department an item pledged, received, purchased or traded, or sought to be pledged, received, purchased or traded, if the pawnbroker or precious metal dealer has reason to believe that the article was stolen or lost.

(6) *Recordkeeping.* At the time of receipt of an item of property, whether sold or pawned, the licensee shall immediately and legibly record, in English, the following information by computerized or electronic record, including storage on a backup disk or other electronic storage medium, according to the standards and procedures approved by the Chief of Police:

(a) An accurate and complete description of the item of property, including, but not limited to, brand name, model name, serial number, trademark, identification number or any other identifying mark on the item;

(b) The date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records;

(c) The purchase price or loan amount and the check number by which the money was advanced or paid, or the nature of the transaction if not a loan or sale. For pawnbrokers, the information must include:

1. The maturity date of the transaction and the amount due, including monthly and annual interest rates; and
2. All pawn fees and charges and the last regular date 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.

(d) Full name, residence address, residence telephone number, date of birth and accurate physical description of the person from whom the item of the property was received, including: gender, height, weight, race, color of eyes and color of hair;

(e) The identification number and state or agency of issue from one of the following forms of identification of the person from whom the item was received:

1. A current valid Minnesota driver's license;
2. A current valid Minnesota identification card; or
3. A current, valid photo driver's license or identification card issued by another state or province of Canada and one other form of identification.

(f) The signature or unique identifier of the licensee or employee that conducted the transaction; and

(g) The signature of the person identified in the transaction.

(7) *Photographic record.*

(a) A licensee must obtain a digital color photograph or digital color video recording of:

1. Each customer involved in a billable transaction; and
2. Every item pawned or purchased 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 referenced with the information regarding the person and the item sold or pawned. The photographs must be in digital format and must be made available to the Police Department, upon request. 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 he or she is being photographed by displaying a sign of sufficient size in

a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item 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 retain the videotape for 90 days from the date of the transaction.

(8) *Labeling requirement.* A label must be attached 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 licensee'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, and the date the item can be sold, if applicable. The labels shall not be re used.

(9) *Receipts.* The licensee shall provide a receipt to the seller or pledger of any item of property received, containing the following information:

- (a) The name, address and telephone number of the licensee;
- (b) The date and time on which the item was received by the licensee;
- (c) A description of the item received and amount paid to the pledger or seller in exchange for the item pawned or sold;
- (d) The signature of the pledger or seller and the licensee or designee;

(e) For pawnbrokers, the information must include the last regular business day, if any, by which the item must be redeemed by the pledger or seller without risk that the item will be sold and the amount necessary to redeem the transaction goods on that date and the monthly and annual interest rates charged by the licensee, if any, including all pawn fees and charges;

(f) The full name and address of the seller or pledger, and a blank line for the pledger's signature;

(g) The following statements shall be printed on all pawn transaction receipts:

"Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of not less than 60 days past the date of the pawn transaction, renewal or extension; no further notice is necessary. There is no obligation for the pledger to redeem pledged goods. The pledger of this item attests that it is not stolen, that it has no liens or encumbrances against it, and the pledger has the right to sell or pawn the item. This item is redeemable only by the pledger to whom the receipt was issued, or any person identified in a written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger. Written authorization for release of property to persons other than the original pledger must be maintained along with the original transaction record."

(10) *Disposition of pawned articles.*

(a) When any article is sold or disposed of by the licensee, the records shall contain the article sold with the date, the amount for which the article was sold, interest and charges accrued, and identification of the person to whom sold.

(b) For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

(11) *Daily reports to Police Department using APS.* All required transaction record data must be transmitted electronically to the State Police Department at the close of each business day using the current version of APS. If the licensee is unable to report using APS due to technology failures or interruptions, then all required records, including printed copies of all reportable transactions along with the required photographs or video tape for that day, must be maintained at the licensed premises and be made immediately available for inspection upon request by a police officer. If the electronic transmission failure is determined to be in the licensee's system, the licensee must take all reasonable steps including the replacement of its computer system and related components in order to return the electronic reporting system to working condition as soon as possible. If the nonfunctioning system or repair will require more than ten days to return the system to a working condition, the licensee must notify the Police Department. Failure by the licensee to correct a problem with its computer or other systems causing the licensee's inability to electronically transmit required transaction data to APS or failing to notify the Police Department of the malfunction within ten days is a violation of this section. Regardless of the origin of the technical problems that prevented the licensee from transmitting the required reports electronically, upon correction of the problem, the licensee must electronically transmit every reportable transaction to APS from each business day that the problem existed.

(12) *Monthly transaction fee.* In addition to the annual license fee, a licensee must pay a monthly transaction fee based on the actual number of billable transactions conducted by the licensee at the rate established in the fee schedule.

(13) *Inspection of records.* The records referred to in this section shall be open to the inspection of the Police Department at all reasonable times and shall be retained by the licensee on the licensed premises for at least four years, except the video records, which must be retained for 90 days.

(14) *Inspection of premises and items.* At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located during normal business hours, except in an emergency, for the purpose of inspecting the premises and inspecting the items, merchandise and records to verify compliance with this section or other applicable laws.

(15) *Holding period for pawnbrokers.*

(a) *Pawned items.* A person pledging, pawning or depositing an item for security must have a minimum of 60 days from the date of that transaction to redeem the item before it may be forfeited and sold, or in the case of precious metal, traded, melted down or dismantled. During the 60 days following the date of the pawn, pledged items may not be sold or otherwise removed from the licensed location, unless it is redeemed by the person who pawned or pledged the items.

(b) *Purchased items.* Any item purchased or accepted in trade by the licensee must not be sold or otherwise removed from the premises for 30 days from the date of the transaction, except gold and silver coins, as noted below.

(16) *Holding period for precious metal dealers.*

(a) *General rule.* Every precious metal dealer shall hold the following items for a period of 14 days from the time of the transaction:

1. Coins that are purchased because of their numismatic or antique value, (i.e., rare coin collection); and
2. All other secondhand items containing precious metal purchased by the precious metal dealer.

(b) *Exception.* Gold and silver coins that are purchased with the intent to refine (melt) or sell them to a refiner because of their precious metal value, are not subject to the 14-day holding period requirement. During the holding period, items shall not be removed from the licensed premises or altered from their original state.

(17) *Release of property.* Pawnbroker licensees are prohibited from redeeming any pawned item to anyone other than to:

- (a) The person to whom the receipt was issued;
- (b) Any person identified in a written and notarized authorization to redeem the property; or
- (c) Any person identified in writing by the pledger at the time of the initial transaction and signed by the pledger.

(18) *Pawning of motor vehicle titles.* In addition to the other requirements of this section, a pawnbroker who holds a title to a motor vehicle as part of a pawn transaction must:

- (a) Be licensed as a used motor vehicle dealer under Minn. Stat. § 168.27, as it may be amended from time to time, and post the license on the pawnshop premises;
- (b) Verify that there are no liens or encumbrances against the motor vehicle with the State Department of Public Safety;
- (c) Verify that the pledger has automobile insurance on the motor vehicle as required by law;
- (d) Not sell a motor vehicle covered by a pawn transaction until 90 days after recovery of the motor vehicle; and
- (e) Not store any pawned, pledged or purchased vehicles at the license premises in violation of the Zoning Ordinance (Chapter 153).

(19) *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 or melted or dismantled. The investigative hold shall be confirmed in writing by the originating agency within 96 hours and will remain in effect for 15 days from the date of initial notification, until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to this section.

(b) *Order to hold.* Whenever the Police Department 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 Police Department. The order to hold expires 90 days from the date it is placed, unless the Police Department determines additional time is necessary and notifies the licensee in writing to

continue the hold.

(c) *Order to confiscate.* If an item is identified as stolen or evidence in a criminal case, the Police Department may:

1. Physically confiscate and remove the item from the licensed premises, pursuant to a written order from the Police Department; or

2. Place the item on hold or extend the hold pursuant to this section, and leave it on the licensed premises. When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation. The Police Department shall provide the licensee with a property receipt for the item confiscated.

(d) *Notification of release.* When an order to hold/confiscate is no longer necessary, the Police Department will so notify the licensee.

(G) *Prohibited acts.*

(1) *Minors.* Persons under the age of 18 years may not pawn, 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.

(2) *Incapacitated persons.* Licensees may not receive or accept any goods from a person of unsound mind or who is intoxicated.

(3) *Proper identification required.* Licensees may not receive or accept any goods without proper identification of the seller pursuant to the requirements of this section.

(4) *Tampered serial numbers.* Licensees may not receive or accept 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.

(5) *Firearms.* Licensees may not receive or accept firearms, including antique firearms, without a valid federal firearm dealer license.

(6) *Requirements of pledgers.*

(a) No person may pawn, pledge, sell, consign, leave or deposit any article of property with a licensee unless the person is the owner of the property and the property is free from any security interests.

(b) No person seeking to pawn, pledge, sell, consign, leave or deposit any article of property with any licensee shall give false information to the licensee.

(7) *Requirements of licensees.* A pawnbroker or precious metal dealer or an agent or employee of a pawnbroker or precious metal dealer must not:

(a) Make a false entry in the records of pawn or precious metal transactions;

(b) Falsify, obliterate, destroy or remove from the place of business the records, books or accounts relating to the licensee's pawn transactions or transactions involving precious metals;

(c) Refuse to allow the appropriate law enforcement agency, the attorney general or any other duly authorized state or federal law enforcement officers to inspect the pawn or precious metal records or pawn or precious metal goods in the person's possession during the ordinary hours of business or other times acceptable to both parties;

(d) Fail to comply with any of the requirements of this section, or other relevant city code provisions or state statutes related to pawnbrokers and precious metal dealers; or

(e) Sell or lease, or agree to sell or lease, pledged or purchased goods back to the pledger or seller in the same, or a related transaction.

§ 111.08 SEXUALLY-ORIENTED BUSINESSES.

(A) *Purpose, findings and conclusions.*

(1) *Purpose.* The purpose of this section is to provide the opportunity for operation and establishment of sexually-oriented

establishments while providing controls that limit negative impacts of sexually-oriented establishments on residential and commercial areas, and protect the general health, safety and welfare of the citizens of the city.

(2) *Findings of the City Council.* The City Council makes the following findings regarding the effect that sexually-oriented establishments have on the character of the city's neighborhoods. In making these findings, the City Council accepts the recommendations of a staff committee that has studied the experiences of other cities across the country where sexually-oriented establishments have located.

(a) The nature of sexually-oriented establishments is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries or parks.

(b) The concentration of sexually-oriented establishments has an adverse effect upon the use and enjoyment of adjacent areas.

(c) The nature of sexually-oriented establishments requires that they not be allowed within certain zoning districts and that they are subject to special licensing provisions.

(d) Special regulation of sexually-oriented establishments is necessary to ensure that their adverse secondary effects will not contribute to or enhance criminal activity in the area of those uses, nor will they contribute to the blighting or downgrading of the surrounding property and lessening of its value.

(3) *Conclusions of the City Council.* In order to minimize any harmful effects that sexually-oriented establishments may cause on adjacent properties and to protect the health, safety and welfare of its citizens, the City Council adopts the following regulations and restrictions, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of sexually-oriented establishments to locate in the city.

(4) *Consistency with Minn. Stat. § 617.242, as it may be amended from time to time.* This section is to be read in conjunction with Minn. Stat. § 617.242, as it may be amended from time to time, which regulates adult entertainment establishments. To the extent that Minn. Stat. § 617.242, as it may be amended from time to time, applies to portions or facets of the business that are not regulated by this section, the statute shall apply. To the extent that the provisions or regulations of the statute and this section are inconsistent, the more restrictive provision or regulation shall apply.

(B) *Licenses.* All establishments, operating or intending to operate a sexually-oriented establishment, as defined in § 153.457, must apply for and obtain a license pursuant to Chapter 110. The license application must be submitted to the City Council at least 60 days before the licensee desires to begin operation of the business.

(1) *Applications.* In addition to the application requirements of § 110.03, the application must contain the following:

(a) 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 must be professionally prepared and be drawn to a designated scale with marked dimensions of the interior of the premises;

(b) The address and legal description of the property to be used;

(c) The names, addresses, phone numbers and dates of birth of the owner, lessee, if any, as well as the operator or manager;

(d) The names and addresses of all creditors of the applicant, owner, lessee or manager regarding credit that has been extended for the purposes of constructing, equipping, maintaining, operating, furnishing or acquiring the premises, personal effects, equipment or anything incident to the establishment, maintenance and operation of the business; or

(e) Complete and accurate documentation establishing the interest of the applicant and any other person who has an interest in the premises upon which the building is proposed to be located or the furnishings of it, personal property or the operation or maintenance of it. Documentation must be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements or any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the business.

(2) *Investigations.* An investigation is required pursuant to § 110.03(C)(5).

(3) *Management.* If there is a manager in charge of the sexually-oriented establishment or if the named manager in charge of a licensed business changes, the licensee must comply with § 110.09.

(4) *Requalification.* An applicant who has been convicted of an offense enumerated in division (D)(2)(g) below may qualify for

a sexually-oriented establishment license only when the time period required by division (D)(2)(g) below.

(C) *Inspections.* An inspection is required pursuant to § 110.11 prior to approval of the license.

(D) *Denial, suspension and revocation of license.*

(1) In addition to the grounds enumerated in § 110.12, the City Council may deny, suspend or revoke a license if a licensee or an employee of the licensee has:

- (a) Engaged in the use or sale of alcoholic beverages or controlled substances while on the sexually-oriented establishment premises other than at an adult hotel or motel;
- (b) Permitted gambling by any person on the sexually-oriented establishment premises;
- (c) Demonstrated an inability to operate or manage a sexually-oriented establishment in a peaceful and law abiding manner, thus necessitating action by law enforcement officers;
- (d) Allowed prostitution on the premises; or
- (e) Allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises. This division (D)(1) shall not apply if the act occurred in an adult hotel or motel, unless the act occurred in a public place or within public view.

(2) In addition to the grounds enumerated in § 110.12, the City Council shall deny an application if the applicant:

- (a) Is overdue in a payment to the city, county or state for taxes, fees, fines or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually-oriented establishment, or if the state prohibits the issuance of such a license because of assessed taxes, fees, fines or penalties;
- (b) Has been convicted of a violation of a provision of this section;
- (c) Holds a liquor license under §§ 112.01 through 112.07;
- (d) In the judgment of the city is not the real party in interest or beneficial owner of the business operated under the license;
- (e) In the case of an individual, is not a resident of the metropolitan area; in the case of a partnership, the managing partner is not a resident of the metropolitan area; or in the case of a corporation, the manager is not a resident of the metropolitan area. The required residency must be established at the time the license is issued and maintained throughout the existence of the license and all renewals of the license. The time for establishing residency within the metropolitan area may, for good cause, be extended by the licensing authority. For the purposes of this section, the **METROPOLITAN AREA** means the seven county metropolitan area as defined by Minn. Stat. § 473.121(2), as it may be amended from time to time.

(f) The premises to be used for the sexually-oriented establishment have not been approved by the health official, Fire Department, Zoning Administrator and the Building Official as being in compliance with applicable laws and ordinances; or

(g) An applicant has been convicted of a crime involving or arising from any of the following offenses within the past five years:

- 1. Any sex crimes as defined by Minn. Stat. §§ 609.293 through 609.352, as they may be amended from time to time, inclusive or as defined by any ordinance or statute in conformity therewith;
- 2. Any crime in Minn. Stat. §§ 609.746 through 609.749, 609.79, 609.795, 518.01, 609.224, 609.2242, as they may be amended from time to time or related statutes dealing with sexual assault, sexual conduct, harassment, obscenity or domestic abuse or as defined by any ordinance or statute in conformity therewith; or
- 3. Any obscenity crime as defined by Minn. Stat. §§ 617.23 through 617.299, as they may be amended from time to time inclusive, or as defined by any ordinance or statute in conformity therewith.

(3) The fact that a conviction is being appealed has no effect on the disqualification of the applicant.

(E) *Places ineligible.*

(1) No license may be issued for any of the following locations: a place of business that is currently licensed as a tattoo establishment, pawnshop, massage therapy business, reflexology business, check cashing or currency exchange business or any establishment that sells alcoholic beverages.

(2) No sexually-oriented establishment may exceed 2,500 square feet in gross floor area.

(F) *Restrictions and regulations.* A sexually-oriented establishment is subject to the restrictions and regulations in this section.

(1) No owner, manager or employee may allow sexually-oriented materials, as defined in §§ 153.455 through 153.459, or entertainment to be visible or perceivable in any manner, including aurally, at any time from outside the business.

(2) Age restrictions:

(a) No owner, manager or employee may allow a person under the age of 18 to enter the business. The licensee shall require proof of age from all persons entering the premises. Proof of age may be established only by: a valid driver's license or identification card issued by the state, another state or a province of Canada; a valid military identification card issued by the United States Department of Defense; or by a valid passport, all of which shall include a photograph and the date of birth of the person to be identified;

(b) No owner, manager or employee may allow a person under the age of 18 to have access to sexually-oriented materials, whether by sight, purchase, touch or another means; and

(c) No owner or manager may employ a person under the age of 18 on the licensed premises.

(3) No owner, manager or employee may allow a patron, employee or other person on the premises to physically contact, in public view, a specified anatomical area, as defined in §§ 153.455 through 153.459, of himself or herself, or of another person, except that a live performer may touch himself or herself.

(4) A live performer must remain at all times a minimum distance of ten feet from the members of the audience, and must perform on a platform intended for that purpose, which must be raised at least two feet from the level of the floor on which the audience is located. No performer may solicit or accept money, a tip or other item from a member of the audience. No member of the audience may give to or cause to be given to any performer money, a tip or any other item.

(5) No sexually-oriented establishment may have booths, stalls, partitioned portions of a room or individual rooms, except as follows:

(a) Restroom stalls and restrooms are allowed, so long as neither the restroom stalls or the restroom itself are no larger than reasonably necessary to serve their respective purposes, no other activities are provided or allowed in the restroom stalls or restrooms, and there are no chairs, benches or reclining surfaces in the restroom stalls or restrooms; and

(b) Storage rooms and private offices are allowed, provided, however, that the storage rooms and offices are used solely for operating the business and no persons, other than the owner, manager and employee, are allowed in them.

(6) A licensee shall not allow any partition between a subdivision, portion or part of the licensed premises having any aperture which is designed or constructed to facilitate sexual intercourse, sodomy or fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks or female breast between persons on either side of the partition.

(7) Hours restrictions:

(a) A licensed sexually-oriented establishment shall not be open for business to the public:

1. Before 10:00 a.m. or after 10:00 p.m. on the days of Monday through Saturday; or
2. On a Sunday or legal holiday.

(b) In no event shall any person other than the licensee's bonafide employees be in the licensed premises:

1. More than 75 minutes before 10:00 a.m. or after 10:00 p.m. on the days of Monday through Saturday; or
2. On a Sunday or legal holiday.

(8) All license holders shall be required to install or possess digital video security at the licensed location. The Police Department shall confirm that the device has been installed prior to approval of the license.

(G) *Exceptions.* This section does not regulate the following:

(1) Material with significant literary content or social commentary;

(2) A business where sexually-oriented materials are sold, bartered, distributed, leased, furnished or otherwise provided for off

site use or entertainment, if the sexually-oriented material on each item is blocked from view by an opaque cover as required by Minn. Stat. § 617.293, as it may be amended from time to time, and each item is in an area accessible only by an employee of the business;

(3) A person or organization exempted under Minn. Stat. § 617.295, as it may be amended from time to time (i.e., schools, churches, medical clinics, government agencies);

(4) Activity under Minn. Stat. § 617.202, as it may be amended from time to time (sale of articles related to disease);

(5) Displaying of works of art showing specified anatomical areas, as defined in §§ 153.455 through 153.459, so long as no sexually-oriented materials are for sale and the business does not have a liquor license; or

(6) Movies rated G, PG, PG 13, NC 17 or R.

§ 111.09 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS.

(A) *Purpose.* The city has the authority under its police power to prevent public nuisances and public and safety hazards created by certain business practices under the police power. It is the purpose and intent of this section to establish regulations relating to peddlers, solicitors and transient merchants as specifically authorized by Minn. Stat. §§ 329.15, 412.221, Subd. 19, and 437.02, as they may be amended from time to time.

(B) *Definitions.* For purposes of this section, the terms defined have the following meanings.

PERSON. An individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

PEDDLER. A person who meets the following criteria:

(a) Has no fixed place of business but goes from house-to-house, door-to-door, business-to-business, street-to-street, or place-to-place to conduct their activity;

(b) Carries the wares, goods, products, merchandise, personal property or tools with which to perform services being offered for sale;

(c) Sells the wares, goods, products, merchandise, personal property or services at the time of offer;

(d) Delivers the wares, goods, products, merchandise, or other personal property or performs the services immediately upon sale and the exchange of consideration;

(e) Makes sales only to consumers and not to dealers.

SOLICITOR. A person who meets the following criteria:

(a) Goes from house-to-house, door-to-door, business-to-business, street-to-street, or place-to-place to conduct their activity;

(b) May carry the wares, goods, products, merchandise, personal property being offered for sale as samples;

(c) Takes orders for sales of the wares, goods, products, merchandise, personal property or services to be delivered at a future date;

(d) Delivers or has delivered the wares, goods, products, merchandise, personal property or performs the services at a future date.

TRANSIENT MERCHANT. A person who meets the following criteria:

(a) Has a place where business is conducted from a building, structure, covering, tent, table, pavilion, vehicle or lot, either in one location or in multiple locations;

(b) Carries the wares, goods, products, merchandise, or personal property being offered for sale;

(c) Sells the wares, goods, products, merchandise, or personal property at the time of offer;

(d) Delivers the wares, goods, products, merchandise, or other personal property immediately upon sale and the exchange of consideration;

(e) Makes sales only to consumers and not to dealers.

(C) *Exceptions.* For the purpose of this section, the terms "peddler," "solicitor" and "transient merchant" shall not apply and no license or registration shall be required for the following, unless otherwise indicated below.

(1) *Auctions.* Any person conducting an auction with a licensed auctioneer shall not be required to obtain license or to register with the city.

(2) *Government sales.* Any government agency conducting a sale, including a court-ordered sale, a sheriff's sale or the sale of the government agency's surplus property shall not be required to obtain license or to register with the city.

(3) *Customer route sales.* 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, frozen goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on an established regular delivery route shall not be required to obtain license or to register with the city.

(4) *Exercise of constitutional rights.* Any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when that activity is for the primary purpose of exercising that person's State or Federal Constitutional rights (i.e., freedom of speech, press, religion, etc.), shall not be required to obtain license or to register with the city. However, if the exercise of Constitutional rights is merely incidental to the primary purpose of a commercial activity or if professional fundraisers, or fundraisers who receive a commission or a fee are working on behalf of an otherwise exempt person or group, then each person involved in the activity must obtain a license pursuant to division (D) below.

(5) *Farmer's produce or product.* Any person or a sponsoring organization representing multiple vendors who sells or attempt to sell any products of a farm or garden occupied, rented or used by the person and cultivated by the person does not require a license; however, the person or sponsoring organization must register with the city pursuant to division (E) below and in addition to the information required therein, the person or sponsoring organization must provide the following information:

(a) The address or specific location of the farms or gardens upon which the product was cultivated or obtained;

(b) A signed affidavit from the registrant that the product that will be sold was from property occupied, rented or used by the registrant and the product was cultivated by the registrant. For a sponsoring organization, the sponsor will attest that it has received documentation from the participating vendors affirming that they comply with this requirement;

(c) Written confirmation from the Zoning Administrator that the property on which the product will be sold complies with all zoning requirements;

(d) The address or specific location on which the product will be sold and a written acknowledgment from the property owner that includes the following:

1. Consent from the property owner to use the property for the sale of the product;
2. A site map showing the location on the property that will be used for the sale of the product.

(e) A written acknowledgment from the registrant that the registrant has been provided with a copy of and will adhere to the following conditions:

1. Will comply with all condition of the registrant's interim use permit;
2. The registrant shall not interfere with or obstruct the free-flow of vehicular or pedestrian traffic or any right-of-way in order to conduct the business activity, including loading and unloading the product;
3. All structures, tables, tents, canopies, pavilions, shelters or other coverings and areas, including the property used for the business activity, shall be maintained in a neat and professional manner during the hours of operation;
4. All vehicles used to assist with the business activity shall be properly licensed and operable and maintained in a neat and professional manner;
5. The property used for conducting the business activity shall be maintained in a neat and clean condition and no evidence of the business activity shall remain on the property upon removal of the business activity each day;
6. No door-to-door sales shall be permitted.

(6) *Flea markets.* Any persons participating in an organized multi-person bazaar or flea market, when there are no more than

two such sales in each calendar year and the sale lasts no longer than one week.

(7) *Garage sales.* Any persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, when there are no more than two such sales in each calendar year and the sale lasts no longer than one week.

(8) *Isolated sale.* Any isolated or singular sale of property.

(9) Non-profit, charitable, religious organizations or public and private schools who are conducting sales or other similar fundraising activities shall not be required to obtain a license but are subject to certain requirements as follows:

(a) *Local organizations.* All local non-profit, charitable, religious organizations or public and private schools that have a direct connection to or are located within the City shall be required to complete a notification form provided by the City containing:

1. Except for schools, written verification of the non-profit status of the organization;
2. The dates during which the activity will be conducted; the location where the activity will be conducted; and the nature of the goods or services to be sold or offered for sale;
3. A written acknowledgment that the activity will be conducted in such a manner so as to comply with the conditions of division (E)(5)(c) below.

(b) *Non-local organization.* If the organization has no local connection or is not located within the city, then the organization shall be required to submit one registration application per activity, but otherwise shall comply with all the conditions of division (E) below.

(c) For all organizations, while conducting the activity all members of the organization shall wear clothing identifying the sponsoring organization or carry a form of identification from the sponsoring organization.

(10) *Parade vendors.* Sales conducted by peddlers or transient merchants in conjunction with and as part of a city-sponsored community event or parade.

(11) *Sales to dealers.* Transient merchants making direct sales to dealers.

(12) *Solicitors engaged in interstate commerce.* No license is required for a solicitor who takes orders for goods, wares or merchandise delivered to the purchaser from states other than Minnesota; however, the solicitor must register with the city pursuant to division (E) below and in addition to the information required therein, the registrant must provide written documentation, accompanied by an affidavit signed by the registrant, that the goods, wares or merchandise are being delivered from states other than Minnesota, and identifying the state or states from which they are being delivered.

(D) *License requirements.*

(1) *County license.* No person may conduct business as a transient merchant within the city without obtaining a license from Dakota County, as required by Minn. Stat. Chapter 329, as it may be amended from time to time.

(2) *City license and application.* Unless otherwise excepted, no person may conduct business as a peddler, solicitor or transient merchant in the city without a city license pursuant to City Code Chapter 110. Each person who desires to conduct the activity must complete an application and obtain a separate license even if more than one person represents the same individual, firm or corporation. The application shall be submitted at least 21 business days before the applicant desires to conduct business.

(3) *Investigation.* An investigation is required pursuant to City Code § 110.03(C)(5).

(4) *Bond or letter of credit requirement in lieu of insurance.* In lieu of a certificate of insurance, the applicant shall provide a bond or letter of credit payable to the city in the amount of \$3,000, which shall be approved by the Finance Director.

(5) *Photo identification card.* Once a license has been issued, the licensee must obtain a photo identification card from the city.

(6) *Fees.* The license fee, investigation fee and photo identification card fee are established by the City Council resolution.

(7) *License term.* The term of the license begins on the date it is approved by the City Council and terminates on the first of the following:

- (a) One hundred eighty days thereafter; or
- (b) On the expiration date stated in the application; or

(c) On December 31 of that same year.

(8) *Grounds for denial.* In addition to the grounds for denial stated in City Code § 110.12(A), the City Council may deny an application if it finds that the applicant:

(a) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business activity;

(b) Fails the background investigation pursuant to a recommendation by the Police Chief;

(c) Has had an application rejected by the city or other governmental agency within three years prior to the date of application.

(9) *Conditions of license.* In addition to the requirements and conditions in City Code Chapter 110, every licensee shall comply with the following conditions:

(a) Every licensee shall clearly display the license and photo identification card on his or her person, basket, cart or vehicle in a conspicuous place. Every licensee shall produce and show the license number and photo identification card upon request.

(b) All transient merchants, who require a license, shall comply with the requirements of the Zoning Ordinance.

(c) No licensee shall conduct business in any of the following manners:

1. Calling attention to his or her business or items to be sold by means of blowing a horn or whistle, ringing a bell, crying out, or by any other noise so as to be unreasonably audible within an enclosed structure.

2. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.

3. In such a way so as to create a threat to the health, safety and welfare of any individual or the public.

4. For peddlers and solicitors, they shall not go door-to-door before 10:00 a.m. or one half hour after sundown or after 7:00 p.m., whichever occurs first, Monday through Saturday and before 10:00 a.m. or after 3:00 p.m. on Sunday.

5. Failing to provide proof of license or identification, when requested.

6. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No licensee shall claim to have the endorsement of the city solely based on the city having issued a license.

7. 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.

(d) *Exclusion by placard.* Unless invited to do so by the property owner or tenant, no licensee shall enter the property of another when the property is marked with a sign or placard stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors and Transient Merchants prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard pursuant to this section.

(E) *Registration requirements.*

(1) *Registration required.* All person excepted from the licensing requirements of this section pursuant to division (C) above, but who are required to register with the city, must complete a registration application and submit it to the City Clerk at least 21 days before the person desires to begin its activity. Except as provided in division (C)(9)(b) above for non-local non-profit organizations, or farmers markets with a sponsoring organization, each person who desires to conduct the activity must complete a separate application and obtain a separate certificate of registration even if more than one person represents the same individual, firm, organization or corporation. Upon receiving a completed application, the City Clerk will issue a certificate of registration.

(2) *Photo identification card.* The registrant must obtain a photo identification card from the city. No photo identification card shall be required for individual vendors in a farmers market if there is a sponsoring organization, however, a list of vendors must be provided to the city and updated every week during the time when the activity is being conducted.

(3) *Fees.* The registration fee and photo identification card fee are established by City Council resolution.

(4) *Registration term.* The term of the registration begins on the date that a completed Registration Form is approved by the City Clerk and terminates on the first of the following:

(a) One hundred eighty days thereafter; or

(b) On the expiration date stated in the application; or

(c) On December 31 of that same year.

(5) *Conditions of certificate of registration.*

(a) Unless excepted, every registrant shall clearly display the certificate of registration and photo identification card on his or her person, basket, cart or vehicle in a conspicuous place and shall produce them upon request.

(b) Transient merchants shall be required to comply with the requirements of the Zoning Ordinance. One interim use permit may be obtained on behalf of all vendors for a farmer's market in one location.

(c) No registrant shall conduct business in any of the following manners:

1. Calling attention to his or her business or items to be sold by means of blowing a horn or whistle, ringing a bell, crying out, or by any other noise so as to be unreasonably audible within an enclosed structure.

2. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.

3. In such a way so as to create a threat to the health, safety and welfare of any individual or the public.

4. For peddlers and solicitors, they shall not go door-to-door before 10:00 a.m. or one half hour after sundown or after 7:00 p.m., whichever occurs first, Monday through Saturday and before 10:00 a.m. or after 3:00 p.m. on Sunday.

5. Failing to provide proof of registration, or identification, when requested.

6. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No registrant shall claim to have the endorsement of the city solely based on the city having issued a certificate of registration.

7. 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.

(d) *Exclusion by placard.* Unless invited to do so by the property owner or tenant, no registrant shall enter the property of another when the property is marked with a sign or placard stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors and Transient Merchants prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard pursuant to this section.

(F) *Conditions of licenses.*

(1) Every licensee shall display the photo identification card on his or her person, basket, cart or vehicle in a conspicuous place showing the license number and photo identification card. Every licensee/registrant shall produce and show the photo identification card, license number or certificate of registration upon the request of a resident, police officer or city-identified staff person.

(2) Person selling or peddling from vehicles or pushcarts shall not stand upon any sidewalk, street or alley to dispose of goods.

(3) All sales involving open sales lots shall comply with the requirements of the Zoning Ordinance.

(4) No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

(a) Calling attention to his or her business or items to be sold by means of blowing a horn or whistle, ringing a 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 so as to create a threat to the health, safety and welfare of any individual or the public.

(d) Conducting business before 8:00 a.m. or after 9:00 p.m.

(e) Failing to provide proof of license, registration, or identification, when requested.

(f) Using the license or registration of another person.

(g) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having

issued a license or certificate of registration.

(h) 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.

(5) *Exclusion by placard.* Unless invited to do so by the property owner or tenant, no peddler, solicitor, or transient merchant, shall 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 three and three-fourths inches long and three and three-fourths 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. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard pursuant to this section.

§ 111.10 SELF-SERVICE LAUNDRY FACILITIES.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SELF-SERVICE LAUNDRY FACILITY. Machines for washing and drying clothes and similar equipment, made available to the public upon payment of a charge.

(B) *License required.* No person shall engage in the business of operating a self-service laundry without a license pursuant to Chapter 110.

(C) *Information required on self-service laundry applications.* In addition to the application requirements in Chapter 110, every operator of self-service laundry facilities must state the type, serial number and location of each machine operated.

(D) *Condition of the license.* The operation of all self service laundry facilities is subject to curtailment or suspension when the city must conserve water for essential uses.

(2001 Code, § 1125.05)

§ 111.11 LUMBER YARDS.

(A) *Conditions for storage of lumber.* The storage of lumber must comply with the following conditions.

(1) Lumber may not be piled in any yard to a height greater than 20 feet above the grade of the adjoining street or alley.

(2) If piles of lumber are situated adjacent to each other, the space between the piles shall be kept entirely free of refuse and shall be equipped with standard fire hydrants, spaced at regular distances, when deemed necessary by the Fire Chief.

(3) When lumber yards front on streets, a proper fence shall be erected and maintained along the property line. The fence shall provide gates or suitable openings at intervals so as to allow access as required by the Fire Chief.

(B) *Open sheds.* No open shed for storage of lumber shall be erected, and no lumber shall be stored in any shed within the city unless the owner of the property on which the shed is erected shall obtain the written consent of 60% of the property owners located within 300 feet of the property to be occupied by the lumber yard.

(2001 Code, § 1125.07)

§ 111.12 LEGAL FIREWORKS.

(A) *License required.* It is unlawful for any person to engage in the business of selling legal fireworks at retail without first receiving a license for the sale of legal fireworks issued by the City Council as provided in this section.

(B) *Definition.* **LEGAL FIREWORKS** means wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical mixture per tube or a total of 500 grams or less for multiple tubes, snakes and glow worms, smoke devices or trick noisemakers, which include paper streamers, party poppers, string poppers, snappers and drop pops, each consisting of not more than twenty five hundredths grains of explosive mixture.

(C) *Application for license.* A person desiring a license under this section must file an application therefor with the Clerk and deposit with the Clerk the fee set by City Council resolution. The application shall be on a form established by the Clerk and shall require the business name, the business phone number, the address of the property at which the business is to be conducted and other relevant information as may be required by the Clerk.

(D) *Conditions of license.* The license shall be issued subject to the following conditions.

- (1) The licensee shall be 18 years or older on the date the permit application is submitted to the Clerk.
- (2) The license is non transferable, either to another person or location.
- (3) The license must be publicly displayed on the licensed premises.
- (4) The premises must be in compliance with the State Building Code and State Fire Code.
- (5) The premises shall comply with National Fire Protection Association Standard 1124 (most recently adopted edition).
- (6) The premises shall be inspected and approved by the South Metro Fire Department prior to issuance of the license, and the licensee shall pay the required inspection fee.
- (7) During the license term, the premises shall be subject to inspection by city employees, law enforcement and the South Metro Fire Department during normal business hours.
- (8) During the license term, the licensee shall maintain insurance in the types and amounts listed in § 110.03.
- (9) All applicable zoning requirements are met.

(2001 Code, § 1125.17) (Ord. 12-29, passed - -)

§ 111.13 RUBBISH HAULING LICENSE.

(A) *Residential license.* No person may haul, collect or transport rubbish from residences, other than the person's own residence, within the city without a residential hauler's license pursuant to Chapter 110. The Council may impose conditions to the license at any time for cause or violations of any of the conditions of this section. The city will issue no more than six residential hauler's licenses at any time.

(B) *Commercial license.*

(1) No person may collect, haul or transport rubbish or refuse from any multiple-family residence, business or industry, other than the person's own, or collect, haul or transport discarded construction materials or similar rubbish or refuse from any site, other than the person's own, without a commercial refuse hauler's license, pursuant to Chapter 110.

(2) The Council may impose conditions to the license at any time for cause or violations of any of the conditions of this section.

(2001 Code, § 600.03)

AMUSEMENTS AND AMUSEMENT DEVICES

§ 111.30 OUTDOOR LIVE ENTERTAINMENT.

(A) *License required.* It is unlawful to permit or have dancing, singing, disc jockeys, concerts with music for hire or the use of any musical instruments ("live entertainment"), with or without charge, at any outdoor location where intoxicating liquor or 3.2% malt liquor is served, without a license as provided in this section.

(B) *License fee.* The annual license fee shall be established by City Council resolution.

(C) *Hours of operation.* Hours of operation for the live entertainment activity shall be set by the City Council in the license.

(D) *One fee for all forms of live entertainment.* A license granted to cover any one form of live entertainment, as defined in this section covers all forms of live entertainment without additional fees.

(E) *Security plan.* Prior to issuing a license, a security plan must be approved by the Police Chief or his or her designee.

(F) *Notice.* Before issuance of a live entertainment license, the city shall notify property owners within 350 feet of the proposed event at least ten days prior to the City Council meeting.

(G) *Hearing and reasonable conditions.* The City Council shall hold a hearing on the license and may impose reasonable conditions to protect the health, safety and general welfare of the public.

(2001 Code, § 1100.02) (Ord. 11-14, passed - -; Ord. 12-08, passed - -)

§ 111.31 CARNIVALS.

(A) *License required.* No person may conduct a carnival in the city without a license pursuant to Chapter 110.

(B) *Investigation.* An investigation is required pursuant to § 110.03(C)(5).

(C) *Exception.* This section does not apply to city-sponsored carnivals.

(2001 Code, § 1100.05) (Ord. 11-14, passed - -)

§ 111.32 GAMBLING.

(A) *Provisions of state law adopted by reference.* Minn. Stat. § 349.213, as it may be amended from time to time, is adopted by reference.

(B) *Local approval.* Notifications may be made to the City Council by organizations authorized in Minn. Stat. § 349.213, as it may be amended from time to time, to operate gambling devices and conduct raffles in compliance with and subject to the provision, limitations and regulations of law.

(C) *Bingo.* Regulations for bingo are as follows. An organization may not conduct more than ten bingo occasions each week. One facility or premises may not conduct more than 21 bingo occasions each week.

(2001 Code, § 1100.09) (Ord. 11-14, passed - -)

CHAPTER 112: ALCOHOLIC BEVERAGES

Section

Intoxicating Liquor

112.01 Provisions of state law adopted

112.02 License required

112.03 License types

112.04 Persons ineligible for license

112.05 Zoning compliance

112.06 Conditions of license

112.07 Transfer of license

112.08 License penalties

3.2% Malt Liquor

112.20 Definitions

- 112.21 License types
- 112.22 Persons ineligible for license
- 112.23 Conditions of license
- 112.24 Restrictions on purchase and consumption

INTOXICATING LIQUOR

§ 112.01 PROVISIONS OF STATE LAW ADOPTED.

The provisions of Minn. Stat. Chapter 340A, as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, conditions of bonds and licensees, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor are adopted by reference.

(2001 Code, § 1200.01) (Ord. 15-11, passed 11-9-2015)

§ 112.02 LICENSE REQUIRED.

(A) *Definition.* **LICENSED PREMISES**, for purposes of sale and consumption of intoxicating liquor, means a space that is compact and contiguous. In the case of a restaurant or club licensed in conjunction with a golf course, **LICENSED PREMISES** means the entire golf course, except for areas where motor vehicles are regularly parked or operated.

(B) *License required.* No person or organization may directly or indirectly upon any pretense or by any device, manufacture, import, sell, exchange, barter, dispose of, charge for possession or keep for sale any intoxicating liquor without a license pursuant to Chapter 110.

(C) *Investigation.* An investigation is required for all applicants required pursuant to § 110.03(C)(5).

(D) *Inspections.* For all applications for a new business, a pre-license inspection is required pursuant to § 110.11..

(2001 Code, § 1200.03) (Ord. 15-11, passed 11-9-2015)

§ 112.03 LICENSE TYPES.

(A) *On-sale licenses.* No more than 20 licenses will be granted at any time in the city. On-sale licenses issued to clubs (as defined in division (F)(1) below), restaurants, theaters, hotels and bowling centers do not count against the total number of on-sale licenses. Liquor may be consumed on the licensed premises only, which shall be specifically identified in the application. On-sale licenses will be issued only as follows.

(1) *Category 1.* On-sale licenses may be granted to clubs, restaurants, theaters, hotels and bowling centers. For purposes of this section, a **RESTAURANT** is an establishment where meals are regularly prepared on the premises and served at tables to the general public, as defined in Minn. Stat. § 340A.101, Subd. 25, as it may be amended from time to time. Restaurants must be considered a small, medium or large establishment, as defined by the Minnesota Department of Health.

(2) *Category 2.* No more than three on-sale licenses may be issued to restaurants, as defined in Minn. Stat. § 157.15, Subd. 12, as it may be amended from time to time, that only have a limited food menu selection. **LIMITED FOOD MENU SELECTION** means that the restaurant provides one or more of the following:

- (a) Prepackaged food that receives heat treatment and is served in the package;
- (b) Frozen pizza that is heated and served;
- (c) A continental breakfast such as rolls, coffee, juice, milk and cold cereal;
- (d) Soft drinks, coffee or nonalcoholic beverages; or

- (e) Cleaning for eating, drinking or cooking utensils, when the only food served is prepared off site.

In the event that a Category 2 licensee becomes eligible for a Category 1 license, or goes out of business, the number of Class 2 licenses allowed by this section will then be reduced accordingly.

(B) *Off-sale licenses.* Off-sale licenses may be granted to permit the retail sale of alcoholic beverages containing more than 3.2% alcohol by volume in its original container for consumption off the licensed premises only. Such licenses may be issued to drug stores to which an off-sale license had been issued on or prior to May 1, 1994 and exclusive liquor stores.

- (1) *Number of licenses.* No more than six such licenses will be issued at any time in the city.

(2) *Age verification devices.* All licensees shall be required to install and train their employees on the use of age verification devices within 60 days after the license has been approved. Such devices shall be maintained in good and proper working order at all times.

(3) *Annual fee.* The fees for off-sale licenses are established by City Council resolution, however, the annual fee shall be reduced by \$100 if the following conditions are met:

- (a) The licensee posts a policy requiring identification checks for all persons appearing to be less than 30 years old or less; and

(b) The licensee establishes a cash reward and incentive program to reward employees who identify persons underage attempting to purchase alcohol, as well as a penalty program to punish employees who fail a compliance check.

(c) In addition, if the licensee has or installs a digital video security system that continuously records (24-hours per day) and is accessible to the Police Department, the license fee shall be reduced by an additional \$100.

(C) *On-sale wine licenses.* Except as otherwise provided in this section and by law, on-sale wine licenses are granted and issued subject to the same conditions, procedures and restrictions as other on-sale intoxicating liquor licenses specified by this section and by law.

(D) *Sunday sales licenses.* A special license authorizing the sale of intoxicating liquor on Sunday in conjunction with the sale of food may be issued to any qualified establishment holding an on-sale license. The license fee for a special license for Sunday sales is set by City Council resolution.

(E) *Outside service licenses.*

(1) *Approval.* The City Council may approve an outside service license to any on-sale licensee in order to sell or serve intoxicating liquor on an on-going basis in areas outside the building structure that are immediately adjacent to and contiguous with the structure containing the licensed premises. The license fee is set by City Council resolution. Every person desiring a license for an outside service area must file an application as provided by City Clerk. Authority to operate an outside service area will not be granted until the applicant has obtained a conditional use permit for outdoor seating.

(2) Hearing for revocation, suspension, provisional or conditional licenses. The Council may take action on a license for an outside service area when it has reason to believe that the impact of the outside service area on adjoining property will or has produced any of the following:

- (a) Loud, boisterous or disturbing noise levels;
- (b) Hazardous traffic conditions;
- (c) Offensive, obnoxious or disturbing odors;
- (d) Excessive litter;
- (e) Excessive artificial lighting;
- (f) A substantial decrease in adjoining property values; or

(g) Any other condition inconsistent with the reasonable use and enjoyment of adjoining property and inconsistent with the health, safety, morals and general welfare of the adjoining neighbors or community.

(3) The licensee must, with respect to any outside service area, comply with all applicable provisions of law and regulations in regard to the sale and service of intoxicating liquor, including, all applicable regulations contained in this section.

(F) *Temporary on-sale licenses.*

(1) *General rule.* Notwithstanding any other provision of this section, a club (as defined in Minn. Stat. § 340A.101, Subd. 7, as it may be amended from time to time) or charitable, religious or other nonprofit organization may obtain a temporary on-sale license to sell intoxicating liquor for consumption on the licensed premises only and in connection with a social event within the city sponsored by the licensee. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of an on-sale intoxicating liquor license issued by the city.

(2) *Caterer.* The license may provide that the licensee must contract with the holder of an intoxicating liquor license issued by the city who also has a state-issued caterer's permit for dispensing intoxicating liquor. The caterer must provide the city with a valid certificate of insurance for the event.

(3) *The fee for the license will be set by City Council resolution.* A separate license fee shall be due for each application submitted. However, if the applicant applies for more than one event in a single application, only one license fee shall be required.

(4) *Number of days per event.* The license will not authorize any temporary on-sale intoxicating liquor license for more than four consecutive days.

(5) *Number of events per year.* The city will not authorize more than three four-day, four three-day, six two-day or 12 one-day temporary licenses, in any combination not to exceed 12 days per year for the sale of intoxicating liquor to any one organization or for any one location within the city for a 12-month period.

(6) *Number of events per 30-day period.* The city shall not issue more than one license to any organization or political committee, or any one location, within a 30-day period.

(7) *Application.* Application for a temporary license may be made on forms provided by the City Clerk and must include the following information:

(a) The name, address and purpose of the organization, together with the names and addresses of its officers, and evidence of nonprofit status or of its status as a club as defined in this section;

(b) The purpose for which the temporary license is sought, together with the location, dates and hours during which wine or intoxicating liquor will be sold;

(c) Consent of the owner or manager of the premises or person or group with lawful responsibility for the premises;

(d) Evidence that the manager or director has received alcohol awareness training as required in § 112.06(G); and

(e) A security plan approved by the Police Chief or his or her designee.

(8) *Reasonable conditions.* The City Council may impose reasonable conditions to protect the health, safety and general welfare of the public.

(G) *Temporary outside service licenses.* The City Council may issue a temporary outside service license to the holder of an on-sale intoxicating liquor license, or to a club (as defined in Minn. Stat. § 340A.101, Subd. 7, as it may be amended from time to time) or a charitable, religious or other nonprofit organization, in order to dispense intoxicating liquor off premises or outside of its licensed premises that is an outdoor event. The application for a temporary outside service license shall be made on forms provided by the City Clerk. The applicant must comply with all of the following:

(1) Location of event:

(a) *On-site.* The applicant must currently have an on-sale intoxicating liquor license issued by the city if the event will be held on the licensed premises that is owned or leased by the intoxicating liquor license holder or on property immediately adjacent thereto. For property to be "immediately adjacent thereto" it must be contiguous to the applicant's property, however, it may be intersected by an alley, but it may not be intersected by a street.

(b) *Off-site.* If the event will be off-site, the applicant must contract with the holder of an intoxicating liquor license, who also has a state-issued caterer's permit for dispensing intoxicating liquor. The caterer must provide the city with a valid certificate of insurance for the event.

(2) Specify the dates, times and location that the intoxicating liquor will be dispensed and consumed. The applicant must provide an accurate depiction of the location that specifies a compact and contiguous area for the dispensing and consumption of intoxicating liquor. The location may not encroach onto the public right-of-way, unless approved by the City Council.

(3) Provide proper separation for the area where the intoxicating liquor will be dispensed and consumed to control ingress and egress.

(4) Provide a separate liquor liability insurance certificate for the event and the location with coverages as required by Minn. Stat. § 340A.409, Subd. 1, as it may be amended from time to time.

(5) Provide written consent of the owner or manager of the premises on which the outside service will occur if the location is other than the licensed premises.

(6) The applicant must comply with all applicable provisions of state law and the city code in regard to the sale and service of intoxicating liquor.

(7) The applicant shall pay all appropriate fees which shall be set by City Council resolution. A separate license fee shall be due for each application submitted. If the applicant applies for more than one event in a single application, only one license fee shall be required.

(8) If the city determines that the event is being held such that it is a public nuisance under Chapter 94, the city may take emergency action to abate the public nuisance, including, but not limited to, closing the event, pursuant to § 94.15(E).

(9) Number of events per year. The city will not authorize more than three four-day, four three-day, six two-day or 12 one-day temporary licenses, in any combination not to exceed 12 days per year for the sale of intoxicating liquor to any one organization or for any one location within the city for a 12-month period.

(10) Before issuance of a temporary license, the city shall notify property owners within 350 feet of the proposed event at least ten days prior to the City Council meeting.

(11) The City Council may impose reasonable conditions to protect the health, safety and general welfare of the public.

(H) *Special provisions - sports facilities, cultural facilities, community festivals and consumption and display permits.*

(1) *Sports facility or cultural facility.* A holder of an on-sale intoxicating liquor license issued by the city may obtain a temporary license to dispense intoxicating liquor at a convention, banquet, conference, event, meeting or social affair conducted on the premises of a sports facility or cultural facility owned by the city, subject to the limitations in Minn. Stat. § 340A.404, Subd. 4(a), as it may be amended from time to time.

(2) *Community festival.* A holder of an on-sale intoxicating liquor license issued by the city may obtain a temporary license to dispense intoxicating liquor off premises at a community festival held within the city. The area for the dispensing and consumption of intoxicating liquor must be compact and contiguous, with proper separation to control ingress and egress. The licensee must demonstrate that it has liability insurance as prescribed by Minn. Stat. § 340A.409, as it may be amended from time to time, to cover the event.

(3) *Consumption and display permits.*

(a) *Permit required.* No business establishment or club may allow the consumption and display of alcoholic beverages without first having obtained a consumption and display permit from the Commissioner of the Department of Public Safety and from the city. A consumption and display permit may be approved by the City Council for an organization that complies with the requirements of Minn. Stat. § 340A.414, Subd. 2, as it may be amended from time to time, and that complies with all the provisions of this section. The city's permit is not effective until a consumption and display permit is approved by the Commissioner of the Department of Public Safety.

(b) *Posting of permit.* The city's permit must be posted continuously in some conspicuous place upon the premises alongside the permit issued by the Commissioner of the Department of Public Safety.

(c) *Exceptions.* This section does not apply to any premises holding an on-sale intoxicating liquor license under § 112.03(A).

(d) *Fees.* In addition to the annual fee imposed by the Commissioner of the Department of Public Safety, the city shall impose a fee established by City Council resolution. The applicant must also pay the investigation fee required by § 110.03(C)(5)(b) for a background investigation. All city fees must be paid before the permit application will be accepted.

(e) *Application.* The applicant must submit to the City Clerk, the application form for consumption and display permits provided by the Commissioner of the Department Public Safety, any additional forms required by the City Clerk, and the appropriate fees.

(f) *Hearing.* The Council shall hold a hearing on the application. At the hearing, the Council may impose reasonable conditions in order to protect the health, safety and general welfare of the public.

(g) *Term.* Permits issued by the city expire on March 31 of each year, coinciding with the permit issued by the Commissioner

of the Department of Public Safety.

(h) *One license per applicant.* Not more than one license shall be directly or indirectly issued within the city to any one person.

(i) *Location and transfer.* A permit shall be issued only for the compact and contiguous premises described in the application. A permit may not be transferred to another person or to another place.

(j) *Hours.* The consumption and display of intoxicating liquor is allowed only within the hours and days fixed by Minn. Stat. § 340A.504, Subd. 5, as it may be amended from time to time, unless further restricted by the City Council.

(k) *Conditions and restrictions.* The applicant must comply with § 110.03(C)(4) regarding the submission of additional requirements and § 110.11 regarding the right of inspection.

(l) *One-day consumption and display permits.*

1. *Intent and purpose.* It is the intent and purpose of this section to effectuate the authorization to issue one-day consumption and display permits given to cities by Minn. Stat. § 340A.414, Subd. 9, as it may be amended from time to time.

2. *Issuance to non-profits.* One-day consumption and display permits may only be issued to a non-profit organization in conjunction with a social activity in the city sponsored by the organization. The permit must be approved by the Council.

3. *Limit on number of permits.* The city shall not approve more than ten one-day consumption and display permits in any one year.

4. *Fees.* The city shall impose a fee established by City Council resolution. The city fee must be paid before the permit application will be accepted.

(4) *Reasonable conditions.* The City Council may impose reasonable conditions on any license provided in this section to protect the health, safety and general welfare of the public.

(2001 Code, § 1200.03)

(I) *Temporary off-sale wine license.* Temporary off-sale wine licenses may be issued for the off-sale of wine at an auction with the approval of the Commissioner of Public Safety. A temporary off-sale wine license authorizes the sale of only vintage bottled wine that is at least five years old and is of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three consecutive days provided not more than six hundred cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by the City. Licenses are subject to all laws and ordinances governing the sale of intoxicating liquor except Minn. Stat. § 340A.409, as it may be amended from time to time, and those laws and ordinances which by their nature are not applicable.

(J) *Culinary class limited on-sale license.* A limited on-sale intoxicating liquor license may be issued to a business establishment: (a) not otherwise eligible for an on-sale intoxicating liquor license; and (b) that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or twelve ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only.

(K) *Brewer license.*

(1) *On-sale brew pub license.* On-sale brew pub licenses shall be issued only to hotels, clubs, restaurants, bowling centers or exclusive liquor stores and shall permit the sale of malt liquor produced on the licensed premises. A licensee may hold both an on-sale license and an on-sale brew pub license.

(2) *Off-sale malt liquor brewer license (off-sale brew pub).* A brewer with an on-sale brew pub license may be issued an off-sale malt liquor brewer license which shall permit the off-sale of malt liquor at the brewer's licensed premises subject to the provisions of Minn. Stat. § 340A.24, as it may be amended from time to time, and this section.

(a) *Hours of operation.* The off-sale of malt liquor may only be made during the same days and hours permitted at exclusive liquor stores.

(b) A brewer may only hold one brewer off-sale malt liquor license.

(c) The only malt liquor sold on the licensed premises shall be malt liquor produced by the brewer at the brewery premises.

(d) The packing of the containers and bottles must comply with Minn. Stat. § 340A.285, as it may be amended from time to time.

A brewer may also be issued an on-sale intoxicating liquor or 3.2% malt liquor license for a restaurant operated in the place of the manufacturer.

(L) *Cocktail room license.* The holder of a microdistillery license under Minn. Stat. § 340A.22, as it may be amended from time to time, may be issued a cocktail room license.

(1) *Hours of operation.* The on-sale of distilled liquor may only be made during the days and hours that the sale of on-sale intoxicating liquor is permitted.

(2) A cocktail room license authorizes 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.

(3) A distiller may only have one cocktail room license, and may not have an ownership interest in a distillery licensed under Minn. Stat. § 340A.301, Subd. 6(a), as it may be amended from time to time.

(Ord. 15-03, passed 6-8-2015; Ord. 15-11, passed 11-9-2015)

§ 112.04 PERSONS INELIGIBLE FOR LICENSE.

(A) In addition to the grounds stated in § 110.06, no license will be granted to or held by any person or management who:

- (1) Is a manufacturer of 3.2% malt liquor or is interested in the control of any place where 3.2% malt liquor is manufactured; or
- (2) Is or during the period of the license becomes the holder of a federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to him or her a local license to sell intoxicating liquor at that place; or
- (3) Is not the owner of the establishment for which the license is issued; or
- (4) Owned an interest of more than 5% of the corporation, partnership, association, enterprise, business or firm applying for the license and who has had an intoxicating liquor license revoked in any jurisdiction within five years of the license application; or
- (5) Already has an intoxicating liquor license.

(B) *Manufacturers.* **MANUFACTURER** means a manufacturer or distiller of intoxicating liquor, or anyone interested in the ownership or operation of any such place, or a person operating a licensed premises owned by a manufacturer, distiller or exclusive wholesale distributing agent unless such interest was acquired at least six months prior to January 1, 1934. No equipment or fixtures in any licensed premises may be owned in whole or in part by any manufacturer or distiller.

(2001 Code, § 1200.05) (Ord. 15-11, passed 11-9-2015)

§ 112.05 ZONING COMPLIANCE.

No intoxicating liquor license will be granted until all conditional use permits for such premises have been approved by the City Council, and the City Clerk will not issue the license until the licensee complies with all requirements of the conditional use permit.

(2001 Code, § 1200.07) (Ord. 15-11, passed 11-9-2015)

§ 112.06 CONDITIONS OF LICENSE.

(A) *General rule.* All licenses granted under this chapter will be granted subject to the conditions in this section, all other applicable conditions of this code, and to all applicable provisions in the Zoning Ordinance.

(B) *Conduct of business: sales prohibited.* An on-sale license holder may not sell liquor by the bottle or container for removal from the licensed premises. An off-sale license holder may not permit the consumption of any liquor on the licensed premises, except as authorized by Minn. Stat. § 340A.404, Subd. 11, as it may be amended from time to time, which allows the removal of certain wine at a restaurant with an on-sale intoxicating liquor or wine license.

(C) *Off-sale where malt beverages sold.* An off-sale license will not be issued for any place where 3.2% malt beverages are sold for consumption on the licensed premises.

(D) *Minors.* A licensee may not sell or furnish liquor to any person under the age of 21. A person under 18 may not serve or sell intoxicating liquor in a retail on-sale establishment.

(E) *Gambling.* No licensee may keep, possess, 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, gambling devices may be kept or operated and raffles conducted on the licensed premises and adjoining rooms if licensed by the city pursuant to § 111.32.

(F) *Hours of operation.*

(1) *General rule.* No sale of intoxicating liquor either on-sale or off-sale may be made at any time other than as permitted by law pursuant to Minn. Stat. § 340A.504, as it may be amended from time to time.

(2) *Consumption time limitation.* No on-sale licensee or employee or agent of the licensee may permit or allow any person to consume intoxicating liquor within the licensed premises more than 20 minutes after the time the sale of intoxicating liquors on the premises is prohibited.

(3) *Removal of containers.* No licensee may permit any glass, bottle or other container containing intoxicating liquor in any quantity to remain upon any table, bar, stool or other place where customers are served, more than 30 minutes after the time when a sale can legally occur, except as authorized by Minn. Stat. § 340A.404, Subd. 11, as it may be amended from time to time, which allows the removal of certain wine at a restaurant with an on-sale intoxicating liquor or wine license.

(4) *Closing.* Except as otherwise provided in this section, no persons, other than a licensee's cleaning or maintenance personnel, or licensed contractors related to a building project or employees actually engaged in the performance of their duties may be in the licensed premises between 30 minutes after the time when a sale can legally occur and 4:00 a.m. These provisions do not apply to any separate part of the premises that are open to the general public for business purposes unrelated to the sale of intoxicating liquor. Any violation of any condition of this subsection may be grounds for revocation or suspension of the licensee's liquor license. Any person within the licensed premises at the time of such violation must immediately leave the premises upon order by a police officer.

(5) *Windows; shades or curtains.* All licensed on-sale liquor establishments in the city must have curtains or shades, as designated by the Police Chief, fully opened not more than 15 minutes prior to closing time on any day on which the establishment transacts business. The establishment is responsible to ensure that the interior can be fully and easily observed from the outside of the establishment at all the times.

(G) *Training.* The licensee shall provide or arrange for documented training within 60 days after being hired, and annually thereafter, for every person selling or serving liquor. The training shall include education regarding the laws pertaining to the selling or serving of alcohol, the rules for identification checks, the responsibilities of establishments selling intoxicating liquors, and the use of age verification devices, if one is so required. The training shall be provided by an organization approved by the Police Chief. Proof of training shall be provided by the licensee. The failure of a licensee to meet this condition shall result in suspension of the license until the condition is met.

(H) *Off-site storage prohibited.* A holder of an intoxicating liquor license may not store any intoxicating liquor at any location other than the licensed premises.

(2001 Code, § 1200.09) (Ord. 07-26, passed - -; Ord. 15-02, passed 6-8-2015; Ord. 15-11, passed 11-9-2015)

§ 112.07 TRANSFER OF LICENSE.

(A) *General rule.* On-sale liquor licenses are not transferable to another person or entity. Off-sale licenses are transferrable to another person or entity if the new person or entity submits all documentation in § 110.03 for a new application, completes a background investigation, pays all appropriate fees and is approved by the City Council.

(B) *Transfer fees.* At the time the application for the transfer of an existing off-sale liquor license, the applicant must pay the transfer fee and background investigation fee established by City Council resolution.

(2001 Code, § 1200.11) (Ord. 15-11, passed 11-9-2015)

§ 112.08 LICENSE PENALTIES.

(A) Minn. Stat. § 340A.415, as it may be amended from time to time, authorizes a City Council to impose penalties upon the holder of a liquor license or permit who has failed to comply with an applicable statute or ordinance. However, before penalties can be imposed, there must be a finding that the license or permit holder has committed one or more of the following violations:

- (1) Sold alcoholic beverages to another retail licensee for the purpose of resale;
- (2) Purchased alcoholic beverages from another retail licensee for the purpose of resale;
- (3) Conducted or permitted the conduct of gambling on the licensed premises in violation of the law;
- (4) Failed to remove or dispose of alcoholic beverages when ordered by the commissioner to do so under Minn. Stat. § 340A.508, Subd. 3, as it may be amended from time to time; or
- (5) Failed to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages.

(B) The penalties may include revocation of the license or permit, suspension of the license or permit for up to 60 days, the imposition of a civil penalty of up to \$2,000 for each violation, or any combination of these sanctions. No suspension or revocation may take effect until the license or permit holder has been given an opportunity for a hearing, pursuant to § 110.12. Upon a finding that the license holder or permit holder has committed one of the above-mentioned violations, the City Council shall impose a liquor license civil penalty pursuant to the guidelines set forth in City Council Resolution 09-85.

(Ord. 15-11, passed 11-9-2015)

3.2% MALT LIQUOR

§ 112.20 DEFINITIONS.

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

3.2% MALT LIQUOR. Malt liquor, potable as a beverage, containing not less than one-half of 1% alcohol by volume and not more than 3.2% alcohol by weight.

LICENSED PREMISES. Defined in § 112.02.

MALT LIQUOR. Any beer, ale or other beverage made from malt by fermentation and containing not less than 0.5% alcohol by volume.

(B) *License required.* No person, except wholesalers and manufacturers to the extent authorized by law, may deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2% malt liquor within the city without first having received a license pursuant to Chapter 110.

(C) *Investigation.* An investigation is required pursuant to § 110.03(C)(5).

(2001 Code, § 1210.01) (Ord. 10-06, passed - -)

§ 112.21 LICENSE TYPES.

(A) *On-sale.* On-sale licenses will be granted only to clubs, drug stores, restaurants, hotels, bowling centers, golf courses and establishments used exclusively for the sale of 3.2% malt liquor with the incidental sales of tobacco and soft drinks. On-sale licenses permit the sale of 3.2% malt liquor for consumption on the licensed premises only.

(B) *Off-sale licenses.*

(1) Off-sale licenses may be granted to permit the retail sale of alcoholic beverages containing more than 3.2% alcohol by volume in its original container for consumption off the licensed premises only. Such licenses may be issued to drug stores to which an off-sale license has been issued on or prior to May 1, 1994 and exclusive liquor stores.

(2) *Number of licenses.* No more than six such licenses will be issued at any time in the city.

(C) *Temporary on-sale.*

(1) *General rule.* Notwithstanding any other provision of this section, a club (as defined in Minn. Stat. § 340A.101(7), as it may be amended from time to time) or charitable, religious or other nonprofit organization may obtain a temporary on-sale license to sell 3.2% malt liquor for consumption on the licensed premises only and in connection with a social event within the city sponsored by the licensee. The license may provide that the licensee must contract with the holder of an on-sale 3.2% malt liquor license issued by the city, who also has a state-issued caterer's permit for dispensing 3.2% malt liquor. The caterer must provide the city with a valid certificate of insurance for the event.

(2) *Fee.* The fee for the license will be set by City Council resolution. A separate license fee shall be due for each application submitted. If the applicant applies for more than one event in a single application, only one license fee shall be required.

(3) *Number of days.* The number of licenses and days for the licenses shall be consistent with § 112.03 (F)(4), (F)(5) and (F)(6).

(4) *Application.* Application for a temporary license may be made on forms as provided in § 112.03 (F)(7).

(D) *Outside service license.*

(1) *Approval.* The City Council may approve an outside service license to any on-sale licensee in order to sell or serve 3.2% malt liquor on an on-going basis in areas outside the building structure that are immediately adjacent to and contiguous with the structure containing the licensed premises. The license fee is set by City Council resolution. Every person desiring a license for an outside service area must file an application as provided by City Clerk. Authority to operate an outside service area will not be granted until the applicant has obtained a conditional use permit for outdoor seating.

(2) *Hearing for revocation, suspension, provisional or conditional licenses.* Following a hearing pursuant to § 110.12, in addition to the grounds enumerated therein, the Council may take action on a license for an outside service area when it has reason to believe that the impact of the outside service area on adjoining property will or has produced any of the reasons enumerated in § 112.03(E)(2).

(3) The licensee must, with respect to any outside service area, comply with all applicable provisions of law and regulations in regard to the sale and service of 3.2% malt liquor, including all applicable regulations contained in this subchapter.

(E) *Temporary outside service license.*

(1) The City Council may issue a temporary outside service license to the holder of an on-sale 3.2% malt liquor license, or to a club (as defined in Minn. Stat. § 340A.101(7), as it may be amended from time to time) or charitable, religious or other nonprofit organization in order to dispense 3.2% malt liquor off premises or outside of its licensed premises that is an outdoor event.

(2) The application for a temporary outside service license shall be made on forms provided by the City Clerk.

(3) The applicant must comply with all of the following:

(a) Specify the dates, times and location that the liquor will be dispensed and consumed. The applicant must provide an accurate depiction of the location that specifies a compact and contiguous area for the dispensing and consumption of 3.2% malt liquor. The location may not encroach onto the public right-of-way, unless approved by the City Council;

(b) Provide written consent from the owner or manager of the premises on which the outside service will occur, if the location is other than the licensed premises;

(c) The license may provide that the licensee must contract with the holder of an intoxicating liquor license issued by the city who also has a state-issued caterer's permit for dispensing intoxicating liquor. The caterer must provide the city with a valid certificate of insurance for the event;

(d) The applicant must comply with all applicable provisions of state law and the city code;

(e) If the city determines that the event is being held such that it is a public nuisance under Chapter 94, the city may take emergency action to abate the public nuisance, including, but not limited to, closing the event; and

(f) The fee for the license will be set by City Council resolution. A separate license fee shall be due for each application submitted. If the applicant applies for more than one event in a single application, only one license fee shall be required.

(F) *Reasonable conditions.* The City Council may impose reasonable conditions on any license provided in this section to protect

the health, safety and general welfare of the public.

(2001 Code, §§ 1200.04, 1210.03) (Ord. 10-06, passed - -; Ord. 12-06, passed - -; Ord. 14-01, passed 1-27-2014)

§ 112.22 PERSONS INELIGIBLE FOR LICENSE.

In addition to the grounds stated in Chapter 110, no license will be granted to or held by any person who:

(A) Is a manufacturer of non-intoxicating malt liquor or is interested in the control of any place where non-intoxicating malt liquor is manufactured;

(B) Is or during the period of the license becomes the holder of a federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor at any place unless there has also been issued to him or her a local license to sell intoxicating liquor at that place;

(C) Owned an interest of more than 5% of the corporation, partnership, association, enterprise, business or firm applying for the license and who has had an intoxicating liquor license revoked in any jurisdiction within five years of the license application; or

(D) Is not the owner of the establishment for which the license is issued.

(2001 Code, § 1210.05) (Ord. 10-06, passed - -)

§ 112.23 CONDITIONS OF LICENSE.

Every license will be granted subject to the conditions in the following subdivisions and all other provisions of this section and of any other applicable ordinance of the city or state law.

(A) *Employment of minors.* Minors may be employed as "checkers," "cashiers," "carry out persons" or "stock persons" in premises licensed under this subchapter. No person under 18 may serve or sell 3.2% malt liquor.

(B) *Gambling.* No gambling or any gambling device may be permitted on any licensed premises, except the gambling devices described in Minn. Stat. § 609.761, as it may be amended from time to time, when duly notified pursuant to § 111.32.

(C) *Interest in manufacturers or wholesalers.* No manufacturer or wholesaler of 3.2% malt liquor may have any ownership of or interest in an establishment licensed to sell at retail contrary to the provisions of Minn. Stat. §§ 340A.308 or 340A.309, as they may be amended from time to time. No retail licensee and manufacturer may receive any benefits contrary to law from a manufacturer or wholesaler of 3.2% malt liquor and no such manufacturer or wholesaler may confer any benefits to law upon a retail license.

(D) *Liquor dealer's stamp.* No licensee may sell 3.2% malt liquor while holding or exhibiting in the licensed premises a federal retail dealer's special tax stamp unless licensed under the laws of the state to sell intoxicating liquors.

(E) *Sales of intoxicating liquor.* A licensee who is not licensed to sell intoxicating liquor may not sell intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of a licensee will be prima facie evidence that intoxicating liquor is being permitted to be consumed contrary to this subchapter.

(F) *Restaurants.* A restaurant that has both an on-sale wine license and an on-sale 3.2% malt liquor license and whose gross receipts are at least 60% attributable to the sale of food, may also sell intoxicating malt liquor on-sale. Before selling intoxicating malt liquor on-sale, the restaurant must file with the City Clerk an affidavit by its owner, verifying that 60% of its gross sales are attributable to the sale of food.

(G) *Licensee responsibility.* Every licensee is responsible for the conduct of his or her place of business and must maintain conditions of sobriety and order.

(2001 Code, § 1210.07) (Ord. 10-06, passed - -)

§ 112.24 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

(A) *Age misrepresentation.* No minor may misrepresent his or her age for the purpose of obtaining 3.2% malt liquor. For purposes of this section, the term **MINOR** means a person under the age of 21 years.

(B) *Inducing purchase.* No person may induce a minor to purchase or procure 3.2% malt liquor.

(C) *Procurement.* No person other than the parent or legal guardian may procure 3.2% malt liquor for any minor.

(D) *Possession.* No minor may have 3.2% malt liquor in his or her possession with the intent to consume it at a place other than the household of his or her parent or guardian.

(2001 Code, § 1210.11) (Ord. 10-06, passed - -)

CHAPTER 113: TOBACCO

Section

- 113.01 Purpose
- 113.02 Definitions
- 113.03 License required
- 113.04 Responsibility for acts of employees
- 113.05 Prohibited sales
- 113.06 Compliance checks and inspections
- 113.07 Illegal acts
- 113.08 License denial, suspension or revocation

§ 113.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years may purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco-related devices, and the sales, possession and use are violations of both state and federal laws, and because smoking has been shown to be the cause of several severe 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 and tobacco-related 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 and tobacco-related devices, and to further the official public policy of the state to prevent young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

(2001 Code, § 1190.01) (Ord. 10-18, passed - -)

§ 113.02 DEFINITIONS.

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

COMPLIANCE CHECKS. The system the Police Department uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco-related devices are following and complying with the requirements of this chapter and state law.

COMPLIANCE CHECKS shall involve the use of minors as authorized by state law who may attempt to purchase tobacco, tobacco products or tobacco-related devices for educational, research and training purposes.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packing of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack, or other container as described in this definition, shall not be considered **INDIVIDUALLY PACKAGED**.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways or windows, whether open or closed, covering more than 50% of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes a

retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term **LOOSIES** does not include individual cigars with a retail price, before any sales tax, of more than \$2 per cigar.

MINOR. Any person under 18 years of age.

MOVABLE 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 otherwise permanent type of structure.

NICOTINE DELIVERY DEVICES. Any product containing or delivering nicotine intended for human consumption, or any part of such 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 FDA for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

RETAIL ESTABLISHMENT. Any place of business that is a permanent building or structure where tobacco, tobacco products or tobacco-related devices are available for sale to the public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to, grocery stores, bars, drug 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 or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco-related devices without the assistance or intervention of the licensee or the licensee's employees. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

TOBACCO OR TOBACCO PRODUCTS. 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, including, but not limited to, cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. **TOBACCO OR TOBACCO PRODUCTS** excludes any tobacco product that has been approved 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 being marketed and sold solely for such an approved purpose.

TOBACCO-RELATED DEVICE. 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, smoking or other consumption, whether by inhalation, ingestion or any other method of consumption of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic self-service device that upon the insertion of money, tokens or other form of payment dispenses tobacco products, and includes vending machines equipped with manual, electric or electronic locking devices.

(2001 Code, § 1190.03) (Ord. 10-18, passed - -)

§ 113.03 LICENSE REQUIRED.

(A) *General rule.* No person shall sell or offer to sell any tobacco, tobacco products or tobacco-related devices at a retail establishment without first obtaining a license from the city pursuant to Chapter 110. Each location shall require a separate license.

(B) *Applications.* In addition to the application information requirements of § 110.03, the applicant shall submit a copy of the educational materials the applicant uses to educate employees as part of its instructional program.

(C) *License fee.* The applicant shall submit the license fee pursuant to Chapter 110. The license fee shall be used to process applications and by the Police Department for education, training and enforcement of this chapter.

(D) *Investigations.*

(1) For all new and renewal applicants, a background investigation will be conducted on the applicant listed on the application, pursuant to § 110.03(C)(5). If more than one background investigation is required, the applicant shall pay a background investigation fee for each background investigation conducted. For applicants who have an existing tobacco license and want to add an additional

location at any time other than annual renewal, a background investigation will be required.

(2) For applicants who are applying for a license for more than one location, only one background investigation and background investigation fee shall be required.

(E) *License term.* The license term begins on January 1 and terminates on December 31.

(F) *Changes in ownership.* A license is non-transferable. If there is a change in the ownership of the retail establishment, a new license is required and the applicant shall be required to submit to a background investigation as a new applicant.

(G) *Instructional program.* No person shall be issued a license or renewal license to sell tobacco-related products unless an applicant or licensee has a program for instructing all employees regarding the legal requirements pertaining to the sale of tobacco products at the retail establishment for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of tobacco products, requiring employees to request identification from every customer who is under 27 years of age, providing information that the sale of tobacco products to minors is illegal, explaining what kind of proof of age is legally acceptable, and that a sale to a minor can subject the applicant or licensee and its employees to criminal and/or civil liability.

(H) *Age verification device and digital security video.* All license holders shall be required to install or possess age verification devices and digital security video at the licensed location. The Police Department shall confirm that the devices have been installed prior to approval of the license.

(I) *Sampling.* Sampling of tobacco, tobacco products, tobacco-related devices or nicotine delivery devices shall not be permitted within the indoor area of any establishment with a retail tobacco license.

(J) *Moveable place of business.* No license shall be issued to a movable place of business. Only fixed locations shall be eligible to be licensed under this section.

(K) All tobacco, tobacco products, tobacco-related devices or nicotine delivery devices shall 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.

(Ord. 15-04, passed 6-8-2015)

§ 113.04 RESPONSIBILITY FOR ACTS OF EMPLOYEES.

All licensees shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco-related devices on the retail establishments, and the sale of any such item by an employee shall be considered a sale by the licensee for the purposes of this chapter.

(2001 Code, § 1190.07) (Ord. 10-18, passed - -)

§ 113.05 PROHIBITED SALES.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices:

(A) By the means of a vending machine;

(B) By means of loosies as defined in § 113.02;

(C) 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;

(D) By any other means, to any other person, in any other manner or form prohibited by federal, state or local law, ordinance or other regulation;

(E) From a movable place of business, such as, but not limited to, any motorized vehicle, a kiosk, a trailer, a transportable shelter or table or any other movable structure; or

(F) From self-service merchandising.

(2001 Code, § 1190.09) (Ord. 10-18, passed - -)

§ 113.06 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All retail establishments shall be open to inspection by the Police Department or other delegated law enforcement officers or agencies during regular business hours.

(B) From time to time, but at least once per year, a law enforcement officer shall conduct unannounced compliance checks to ensure compliance with the provisions of this chapter.

(C) Compliance checks shall utilize, with the written consent of their parents or guardians, minors over the age of 15 years, but less than 18 years, to enter the retail establishments to attempt to purchase tobacco, tobacco products or tobacco-related devices.

(D) Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers.

(E) Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, or the unlawful possession of tobacco, tobacco products or tobacco-related devices when those items are obtained as a part of the compliance check.

(F) Nothing in this chapter shall prohibit other compliance checks authorized by state or federal laws for educational, research or training purposes, or required for the enforcement of a particular state or federal law.

(2001 Code, § 1190.11) (Ord. 10-18, passed - -)

§ 113.07 ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales.* It shall be unlawful for any person to sell or otherwise provide any tobacco, tobacco product or tobacco-related device to any minor.

(B) *Illegal possession.* It shall be unlawful for any minor to possess any tobacco, tobacco product or tobacco-related device. This chapter shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be unlawful for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device or nicotine delivery device.

(D) *Illegal purchase.* It shall be a violation of this section for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco-related device, and it shall be unlawful for any person to purchase, or otherwise obtain such items on behalf of a minor. It shall further be 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 or tobacco-related device.

(E) *Use of false identification.* It shall be unlawful for any minor to attempt to disguise the minor's 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.

(F) No minor may furnish, sell or attempt to sell tobacco, tobacco products or tobacco related devices unless written consent has been obtained from the minor's parents. Such written consent must include a statement of the potential penalties that can be imposed under this Section.

(2001 Code, § 1190.13) (Ord. 10-18, passed - -)

§ 113.08 LICENSE DENIAL, SUSPENSION OR REVOCATION.

(A) *Grounds for denial, suspension or revocation.* The City Council may deny, revoke or suspend a license for violating a provision of this chapter or for any of the reasons enumerated in § 110.12(A). In addition, the City Council shall impose a civil penalty for each violation.

(B) *Minimum penalties.* The following are deemed appropriate minimum penalties for a licensee's failure to comply with an applicable statute, rule or ordinance relating to the license; however, the level and order of the penalties will be at the sole discretion of

the City Council, based upon the nature of the infraction. When appropriate, the City Council may impose penalties exceeding those stated below or impose other conditions deemed appropriate:

<i>Violation</i>	<i>Licensee</i>	<i>Employee</i>
First violation	\$75 fine and attend training by Police Department	\$50 fine
Second violation within 24 months	\$200 fine, plus 3-day suspension	\$50 fine
Third violation within 24 months	\$750 fine, plus 7-day suspension	\$50 fine
Four or more violations within 24 months	\$1,500 fine + revocation	\$50 fine

- (C) *Notice.* Notice must be provided pursuant to § 110.12(D)(1).
- (D) *Hearing.* A hearing will be conducted pursuant to § 110.12(D). It is not necessary that criminal charges be brought in order to support a determination of a license violation nor does the dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this chapter.
- (E) *Final decision.* Following the hearing, the Council may deny, revoke, suspend or not renew the license for the retail establishments or may grant or continue the license upon such terms and conditions as it deems reasonable and necessary to accomplish the purposes of this chapter. The decision by the City Council following a hearing is final.
- (F) *Non-exclusive remedy.* Enforcement actions provided in this chapter are not exclusive, and the Council may take any action with respect to a licensee, employee or the retail establishments as is authorized by the city code, state or federal law.
- (G) *Re-application.* Upon revocation of a license, the owner must re-apply for a new license and comply with all the provisions of § 113.03.
- (2001 Code, § 1190.15) (Ord. 10-18, passed - -)

TITLE XIII: GENERAL OFFENSES

Chapter	
130. GENERAL PROVISIONS	
131. DANGEROUS WEAPONS	
132. GRAFFITI	
133. MISCELLANEOUS PROVISIONS	

CHAPTER 130: GENERAL PROVISIONS

Section	
130.01	Conduct prohibited
130.02	Provisions of Criminal Code adopted
130.03	Drug abuse and control

§ 130.01 CONDUCT PROHIBITED.

It is unlawful for any person to engage in an act or in the conduct prohibited by this title.

(2001 Code, § 2000.01)

§ 130.02 PROVISIONS OF CRIMINAL CODE ADOPTED.

The provisions of Minn. Stat. Chapter 609, Criminal Code, as it may be amended from time to time, and as set forth in this section, are adopted by reference.

Section 609.17 "Attempts"

Section 609.175 "Conspiracy"

Section 609.221 "Assault in the First Degree"

Section 609.222 "Assault in the Second Degree"

Section 609.223 "Assault in the Third Degree"

Section 609.2231 "Assault in the Fourth Degree"

Section 609.224 "Assault in the Fifth Degree"

Section 609.2242 "Domestic Assault"

Section 609.27 "Coercion"

Section 609.321 "Prostitution"

Section 609.33 "Disorderly House"

Section 609.375 "Non-Support of Spouse or Child"

Section 609.505 "Falsely Reporting Crime"

Section 609.52 "Theft"

Section 609.535 "Issuance of Dishonored Checks"

Section 609.545 "Misusing Credit Card to Secure Services"

Section 609.576 "Negligent Fires, Dangerous Smoking"

Section 609.605 "Trespass"

Section 609.66 "Dangerous Weapons"

Section 609.68 "Unlawful Deposit of Garbage, Litter or Like"

Section 609.705 "Unlawful Assembly"

Section 609.715 "Presence at Unlawful Assembly"

Section 609.72 "Disorderly Conduct"

Section 609.75 "Gambling"

Section 609.755 "Acts of or Relating to Gambling"

(2001 Code, § 2000.03)

§ 130.03 DRUG ABUSE AND CONTROL.

Minn. Stat. Chapter 152, as it may be amended from time to time, and Minn. Stat. §§ 151.40 and 609.684, as they may be amended from time to time, are adopted by reference.

(2001 Code, § 930.01)

§ 130.04 CONDUCT IN OR NEAR SCHOOL BUILDINGS OR GROUNDS.

- (A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- PUBLIC SCHOOL.** Any school building, school grounds, play area, parking lot, bus stops, school bus or athletic field owned or leased by a public school district.
- SCHOOL OFFICIAL.** The principal, assistant principal or any schoolteacher of a public school.
- (B) *Defacement of school buildings.* No person may mark with ink, paint, chalk or other substance, or post advertisements on, or in any other manner deface or injure fences, trees, lawns or fixtures appurtenant to or located on the public school, or post advertisements on such fences, trees or fixtures. No signs may be placed or posted anywhere on a public school without the express permission of a school official.
- (C) *Breach of peace on school grounds.* No person may make or assist in making any noise, disturbance, diversion or activity by which peace, quiet and good order of the public school is disturbed.
- (D) *Fighting and brawling on school grounds.* No person may engage in, threaten to engage in, or assist in engaging in any riot, fight, brawl, tumultuous conduct or act of violence in a public school.
- (E) *Indecent language on school grounds.* No person may use foul, offensive, obscene or indecent language in a public school.
- (2001 Code, § 2015)

CHAPTER 131: DANGEROUS WEAPONS

Section

- 131.01 Purpose
- 131.02 Definitions
- 131.03 Discharge
- 131.04 Transportation of firearms and bows and arrows
- 131.05 Possession by certain minors
- 131.06 Prohibited acts; prohibited weapons; exceptions
- 131.07 Exception

§ 131.01 PURPOSE.

The City Council finds that in order to preserve and protect the health, safety and welfare of the citizens of the city it is necessary to adopt regulations governing the use of firearms, bows, arrows and dangerous weapons within the city.

(2001 Code, § 925.01) (Ord. 11-14, passed - -)

§ 131.02 DEFINITIONS.

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

BODILY HARM. Physical pain or injury, illness or any impairment of physical condition.

BOWS AND ARROWS or **BOW AND ARROW.** Any device or combination of devices, including, but not limited to, traditional, compound and cross bows, designed to propel any arrow from a cord connecting the two ends of a bow by pulling on the cord bending the bow and then releasing the cord. It does not mean devices of this type commonly interpreted to be toys.

DANGEROUS WEAPON. Any firearm, whether loaded or unloaded, any device designed as a weapon and capable of producing bodily harm, or any other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce bodily harm.

FIREARM. Any device that propels any missile, projectile, bullet or other mass through a barrel by means of explosives, gas, air and/or spring devices except that any device that discharges blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use as a bird or animal repelling device will not be considered a **FIREARM** for purposes of this section. The definition of **FIREARM** includes weapons more commonly known as "paint ball guns."

(2001 Code, § 925.05) (Ord. 11-14, passed - -)

§ 131.03 DISCHARGE.

(A) Except according to this section, it is unlawful to discharge or use any firearm or bow and arrow within the corporate boundaries of the city.

(B) Bows and arrows may be used on school and city property in connection with an organized school or recreation class or on an archery range provided that the arrows used are equipped with blunt tips (also known as "field points" or "target tips"). Broad head tips are prohibited.

(C) Firearms may be discharged on any approved firearms range within any county or regional park while participating under a permit or license in a special hunting program established by the county board.

(D) Under the conditions for discharge allowed in this section, a person under the influence of alcohol, narcotics or any other drug may not discharge a firearm or bow and arrow.

(E) Nothing in this section is construed to include any discharge of any firearm or bow and arrow when done in the lawful defense of person, family or property.

(F) Nothing in this section is construed to include any discharge of any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition when used for construction purposes.

(2001 Code, § 925.07) (Ord. 11-14, passed - -)

§ 131.04 TRANSPORTATION OF FIREARMS AND BOWS AND ARROWS.

(A) A person may not transport any firearm in a motor vehicle, airplane, snowmobile or boat unless it is unloaded in both barrels and magazine and completely contained in a gun case expressly made for that purpose and is fully enclosed by being zipped, snapped, buckled, tied or otherwise fastened, with no portion of the firearm exposed, or unless unloaded and contained in the trunk of a car with the trunk door closed. Pistols and revolvers may be transported when done according to Minn. Stat. §§ 624.711 through 624.717, as they may be amended from time to time.

(B) A person may not transport the following in a motor vehicle, airplane, snowmobile or boat:

(1) A bow and arrow unless unstrung or completely contained in a case or unless contained in the trunk of a car with the trunk door closed; or

(2) A muzzle loading firearm unless fully unloaded and completely contained in a gun case expressly made for that purpose and fully enclosed by being zipped, snapped, buckled, tied or otherwise fastened with no portion of the firearm exposed, or unless unloaded

and contained in the trunk of a car with the trunk door closed. 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.

(2001 Code, § 925.09) (Ord. 11-14, passed - -)

§ 131.05 POSSESSION BY CERTAIN MINORS.

(A) Except according to this section, a person under the age of 16 years unless accompanied by a parent or guardian, must not have in their possession or under their control, a firearm for any purpose. In this section, the word ***GUARDIAN*** is defined as legal guardian or any other person over the age of 18 years who has been selected by the parent or legal guardian to supervise the underage person.

(B) This section does not apply to any person between the ages of 14 years and 16 years who has the certificate provided for in Minn. Stat. § 97B.015, as they may be amended from time to time, or to any person participating in the course provided by Minn. Stat. § 97B.015, as it may be amended from time to time, to carry a properly encased and unloaded firearm to and from class and to handle the same during the instruction. Also, the person will be allowed participation in organized target shooting programs conducted under qualified adult supervision.

(C) A parent or guardian must not permit a child under 14 years of age to handle or use any firearm, any ammunition or any explosive outside of the parent's or guardian's presence.

(D) A person must not furnish a minor less than 18 years of age with any firearm, any ammunition or any explosive without the written consent of the minor's parent or guardian.

(2001 Code, § 925.11) (Ord. 11-14, passed - -)

§ 131.06 PROHIBITED ACTS; PROHIBITED WEAPONS; EXCEPTIONS.

(A) A person must not do any of the following:

(1) Recklessly handle or use a firearm, bow and arrow, dangerous weapon or explosive so as to endanger the safety of another;

(2) Intentionally point a firearm of any kind, whether loaded or unloaded, at or toward another;

(3) Possess any device or weapon known as a sand club, metal knuckles, switchblade knife, dagger, stiletto, dirk, blackjack, chain club, pipe club, Molotov cocktail, grenade, throwing star or similar device; or

(4) Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another.

(B) Division (A) above does not apply to the devices, weapons or articles mentioned when they are carried or possessed as curiosities for their historical significance or value.

(2001 Code, § 925.13) (Ord. 11-14, passed - -)

§ 131.07 EXCEPTION.

This section does not apply to:

(A) Law enforcement officers and members of the armed services of either the United States or the state for use in the course of their duties; or

(B) A city-sanctioned wildlife management program.

(2001 Code, § 925.15) (Ord. 11-14, passed - -)

- 132.01 Purpose
- 132.02 Definitions
- 132.03 Concurrent remedies
- 132.04 Creation of graffiti and possession of graffiti materials
- 132.05 Sale of graffiti materials to minors
- 132.06 Owner's responsibility
- 132.07 Limited entry upon land
- 132.08 Interference with official duties
- 132.09 Notice; abatement
- 132.10 Restitution
- 132.11 Graffiti abatement civil in nature

§ 132.01 PURPOSE.

(A) The City Council finds and declares that the defacing of public and private property by painting, drawing, writing, etching or carving, by use of paint, spray paint, ink, knife or any similar method, commonly referred to as "graffiti vandalism," constitutes a serious and growing menace, injurious to the public health, safety, morals and general welfare of the residents of the city; that graffiti vandalism may contribute substantially to the spread of gang activity, violence, crime and deterioration of property values; and that prompt eradication of graffiti vandalism is necessary to control the spread of graffiti vandalism, and to promote the public health, safety, morals and general welfare of the residents of the city.

(B) The Council declares its intention to minimize and to quickly remove graffiti to limit its adverse impact on neighborhoods. Graffiti is declared to be a public nuisance and a public health and safety hazard for purposes of Minn. Stat. § 429.101(1)(c), as it may be amended from time to time.

(2001 Code, § 2020.03)

§ 132.02 DEFINITIONS.

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

DEFACE. To alter the appearance of something by removing, distorting, adding to or covering all or part of it.

GRAFFITI. Any writing, printing, marks, signs, symbols, figures, designs, inscriptions or other drawings which are scratched, scrawled, printed, drawn or otherwise placed on any exterior surface of a building, wall, sidewalk, sign, telephone pole or any permanent structure on public or private property and which have the effect of defacing the property.

GRAFFITI MATERIALS. Include paint, aerosol or pressurized containers of paint, indelible markers, ink, dye or any other substance capable of defacing property.

VANDALISM. The willful damage, destruction or defacement of public or private property.

(2001 Code, § 2020.03)

§ 132.03 CONCURRENT REMEDIES.

The abatement procedures in this section for defaced property will not be exclusive and do not restrict the city from concurrently

enforcing other city ordinances, or pursuing any other remedy provided by law.

(2001 Code, § 2020.05)

§ 132.04 CREATION OF GRAFFITI AND POSSESSION OF GRAFFITI MATERIALS.

It is unlawful for any person to intentionally place graffiti on any exterior surface located on public or private property. It is unlawful for any person to possess graffiti materials for the purpose of placing graffiti on any exterior surface placed on public or private property.

(2001 Code, § 2020.07)

§ 132.05 SALE OF GRAFFITI MATERIALS TO MINORS.

It is unlawful for any business to sell any graffiti materials to minors without the consent of the minor's parent or legal guardian.

(2001 Code, § 2020.09)

§ 132.06 OWNER'S RESPONSIBILITY.

It is unlawful for the owner of any property to allow graffiti on the owner's property. The owner of any such property will remove any graffiti that has been placed upon the property.

(2001 Code, § 2020.11)

§ 132.07 LIMITED ENTRY UPON LAND.

The city may enter upon private premises at any reasonable time for the purposes of carrying out any of the duties assigned them under this section.

(2001 Code, § 2020.13)

§ 132.08 INTERFERENCE WITH OFFICIAL DUTIES.

It is unlawful for any person to prevent, delay or interfere with representatives of the city while they are engaged in the performance of duties imposed by this section.

(2001 Code, § 2020.15)

§ 132.09 NOTICE; ABATEMENT.

In all cases of nuisances described in § 132.01(B), the city will serve notice upon the owner of the property who permits the nuisance, pursuant to Chapter 94.

(2001 Code, § 2020.17)

§ 132.10 RESTITUTION.

In the event the person or persons responsible for the graffiti are convicted and the court orders the offender to pay restitution for the cost of the cleanup, and the property owner or the city have expended funds to clean up the graffiti, the restitution will be directed to the property owner or the city in the amounts that they expended as reimbursement for the cost of the cleanup.

(2001 Code, § 2020.19)

§ 132.11 GRAFFITI ABATEMENT CIVIL IN NATURE.

A violation of § 132.06, relating to a violation of an owner of property for failing to remove the graffiti, will not be treated as a misdemeanor nor will it be criminal in nature.

(2001 Code, § 2020.21)

CHAPTER 133: MISCELLANEOUS PROVISIONS

Section

- 133.01 Unnecessary noise
- 133.02 Entering upon land
- 133.03 Obscene material
- 133.04 Resisting a public officer
- 133.05 Liquor and beer; public and private places
- 133.06 Drug paraphernalia
- 133.07 Social host liability

§ 133.01 UNNECESSARY NOISE.

(A) General rule.

(1) No person shall make, continue, permit or cause to be made or continued any loud, unnecessary or unusual noise or any noise within the city that would be likely to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of ordinary sensibilities.

(2) The following non-exclusive characteristics and conditions shall be considered in determining whether a noise is loud, disturbing or excessive for the purposes of this section:

- (a) The time of day or night the noise occurs;
- (b) The duration or recurrence of the noise;
- (c) The proximity of the noise source to any location, such that it is reasonably likely to interfere with the peace, quiet, repose or operation of that property;
- (d) The number of people and their activities that are affected or likely to be affected by the noise;
- (e) The land use, nature and zoning of the area from which the noise emanates and the area where it is perceived; and
- (f) The sound level, if known, in comparison to the level of ambient noise.

(B) Participation in noisy gatherings.

(1) Between the hours of 10:00 p.m. and 7:00 a.m., no person shall congregate or participate in any party or gathering of people from which noise emanates of sufficient volume to unreasonably disturb the peace, quiet or repose of other persons, except as allowed by the city.

(2) A police officer may order all persons present at the party or gathering other than the owners, residents or tenants to immediately disperse. Any person who refuses to leave after being ordered to do so is guilty of a violation of this section.

(3) Owner's responsibility:

(a) Any owner, tenant or resident of the building or place who has legal authority to control the activities at the building or place and who knows or has reason to know of the disturbance and fails to immediately take reasonable steps to abate the disturbance is guilty of violating this section; and

(b) Any owner, tenant or resident of the building or place who knows or has been notified of a pattern of disturbances and fails to immediately take reasonable steps to abate the disturbances is guilty of violating this section.

(C) *Amplified sound.* Between the hours of 10:00 p.m. and 7:00 a.m., no person shall operate a sound amplification device, unless otherwise allowed by law or specifically permitted by approved permit or license, that would reasonably disturb or interfere with the peace or safety of a reasonable person of ordinary sensibilities.

(D) *Motor vehicles.*

(1) *General rule.* No person shall use any car, truck, motorcycle, motorboat, all-terrain vehicle, snowmobile, recreational vehicle or other motor vehicle in such a way that causes a disturbance or an annoyance to a reasonable person of ordinary sensibilities present in the area.

(2) *Amplified sound from motor vehicles.* No person shall operate or permit operation of a device used for the amplification of sound from a motor vehicle, when the sound is audible above the level of conversational speech and causes a disturbance or an annoyance to a reasonable person of ordinary sensibilities present in the area of the motor vehicle. Any person who has care or control of the motor vehicle with the operating device, whether or not the owner, is guilty of a violation of this section. Any person who assists with the amplification of sound is guilty of violating this section.

(E) *Power equipment.* Between the hours of 10:00 p.m. and 7:00 a.m., in a residential zoning district, no person shall operate power equipment or other similar power maintenance equipment that would cause a disturbance or an annoyance to a reasonable person of ordinary sensibilities present in the area.

(F) *Refuse hauling and recycling collection.* Between the hours of 10:00 p.m. and 7:00 a.m. on any weekday, and between the hours of 9:00 p.m. and 9:00 a.m. on any weekend or holiday, no person shall collect or remove garbage or recyclables in a residential zoning district or any commercial or industrial district that is located within 500 feet of a residential zoning district.

(G) *Construction activities.* Between the hours of 9:00 p.m. and 7:00 a.m., Monday through Saturday and all day on a legal holiday, no person shall engage in or permit construction activities which would cause a disturbance or an annoyance to a reasonable person of ordinary sensibilities present in the area. If hours are otherwise designated in the building permit, the building permit shall prevail.

(H) *Animal noise.* Animal noise is regulated by § 90.07.

(I) *Exemptions.* The following activities are specifically exempted from the provisions of this section:

(1) Emergency public works repair or construction;

(2) Public works construction and maintenance by federal, state, county or city authorities or their contractors and sub-contractors, as approved by the City Engineer;

(3) Snow removal activities; and

(4) All activities and land uses with specific hours of operation that are regulated and approved by the city through a licensing, permitting or zoning process; however, even if the activity or land use is operating within the approved hours of operation, the activity and land use cannot annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of ordinary sensibilities.

(2001 Code, § 2005.02) (Ord. 12-13, passed - -)

§ 133.02 ENTERING UPON LAND.

(A) *Consent.* It is unlawful for any person to enter upon the land of another without claim of right or the written consent of the owner or of one who has the right to give consent, except in an emergency situation.

(B) *Refusal to leave.* It is unlawful for any person in violation of division (A) above to refuse to leave land upon the order of a

police officer or owner, or, if the person is lawfully on the land, to refuse to exhibit the written consent required by division (A) above.

(2001 Code, § 2005.03)

§ 133.03 OBSCENE MATERIAL.

(A) *General rule.* It is unlawful for any person knowingly to exhibit, show, sell, attempt to sell, give away, circulate, publish, distribute or attempt to distribute any book, magazine, pamphlet, paper, writing, advertisement, print, printing, picture, photograph, film, motion picture, play, performance, statue, instrument or other article, matter or work that depicts specified sexual activities, as defined by § 153.457, unless properly licensed.

(B) *Display or sale to minors.*

(1) It is unlawful to knowingly display or maintain in public view, in any business establishment where minors under the age of 18 years are permitted or invited as part of the general public to enter, any photograph or picture, pocket book, book, pamphlet or magazine the cover or contents of which depict or consist of pictures of specified sexual activities, as defined by § 153.457.

(2) It is unlawful for any person to sell or loan for monetary consideration to a minor any photograph, picture pocket book, book or magazine which contains any matter enumerated within division (B)(1) above.

(2001 Code, § 2005.05)

§ 133.04 RESISTING A PUBLIC OFFICER.

It is unlawful for any person to willfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his or her office.

(2001 Code, § 2005.07)

§ 133.05 LIQUOR AND BEER; PUBLIC AND PRIVATE PLACES.

(A) *General rule.* No person may drink or have in his or her control or possession any intoxicating liquor, non-intoxicating malt liquor or alcoholic beverage in any public street, alley or upon the private premises of another, as a trespasser.

(B) *Disposition.* All intoxicating liquor, non-intoxicating malt liquor and alcoholic beverages possessed in violation of this section will be seized and destroyed by the city.

(2001 Code, § 2005.15)

§ 133.06 DRUG PARAPHERNALIA.

(A) *Provisions of state law adopted by reference.* Minn. Stat. Chapter 152, as it may be amended from time to time, is adopted by reference.

(B) *Purpose.* The purpose of this section is to regulate the possession, sale, manufacture, advertisement and delivery of drug paraphernalia and thereby deter the use of controlled substances in the city. This section is not intended to allow what the state statutes prohibit nor to prohibit what state statutes expressly allow.

(C) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

DRUG PARAPHERNALIA. All equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of state statutes or this section. It includes, but is not limited to:

(a) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of

plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use or designed of use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used, intended for use or designed for use in a weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips or meaning objects used to hold burning material such as a marijuana cigarette which has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; and

13. Ice pipes or chillers.

(D) *Exceptions.* Drug paraphernalia shall not include:

(1) Those items used in conjunction with permitted uses of controlled substances under the Uniform Controlled Substances Act;

(2) Those items used by law enforcement officials as it relates to the seizure and/or forfeiture of drug paraphernalia in connection with a crime or offense;

(3) Those items used by federal, state or local law enforcement officials for educational purposes; or

(4) The possession, manufacture, delivery or sale of hypodermic needles or syringes in accordance with Minn. Stat. § 151.40(2), as it may be amended from time to time.

(E) *Evidence.* In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner or anyone in control of the object under state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this section;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner or anyone in control of the object to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section; the innocence of an owner or anyone in control of the object as to a direct violation of this section should not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object that explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use.

(F) *Offenses.*

(1) *Possession.* It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or to otherwise introduce into the human body a controlled substance in violation of this section.

(2) *Manufacture, sale or delivery.* It is unlawful for any person to sell, deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this section.

(3) *Minors.* Any person 18 years of age or over who violates division (F)(2) above by selling or delivering drug paraphernalia and said sale or delivery is to a person who is under 18 years of age and at least three years his or her junior shall be violating this division (F)(3), as well as division (F)(2) above.

(4) *Advertisement.* It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(G) *Penalty.* Any person who violates any provision of this section shall be guilty of a misdemeanor.

(H) *Civil forfeiture.* All drug paraphernalia as defined in this section is subject to forfeiture, subject to the provisions set forth in state statutes.

§ 133.07 SOCIAL HOST LIABILITY.

(A) *Purpose.*

(1) The City Council intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons criminally responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol, regardless of whether the person hosting the event or gathering supplied the alcohol.

(2) The City Council finds that:

(a) 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;

(b) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions;

(c) 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 an irresponsible user;

(d) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. There are, however, times when the parent(s) is/are present and, condone the activity, and in some circumstances provide the alcohol;

(e) Even though giving or furnishing alcohol to an unrelated underage person is a crime, it is difficult to prove, and an ordinance is necessary to help further combat underage consumption; and

(f) A deterrent will be created by holding a person criminally responsible for hosting an event or gathering where underage possession or consumption of alcohol occurs.

(B) *Definitions.* For the purpose 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, 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 0.5% or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

EVENT or GATHERING. Any group of three or more persons who have assembled or gather together for a social occasion or other activity.

HOST or ALLOW. To aid, conduct, entertain, organize, supervise, control or permit a gathering or event.

PARENT. Any person having legal custody of a juvenile, such as a natural, adoptive parent or stepparent, as a legal guardian; or as a person to whom legal custody has been given by order of the court.

PERSON. Any individual, partnership, co-partnership, corporation or any association of one or more individuals. A **PERSON** does not include any city, county or state agency.

RESIDENCE, PREMISES or PUBLIC OR PRIVATE PROPERTY. Any home, yard, farm, 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, 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 individual less than 21 years of age.

(C) *Prohibited acts.*

(1) It is unlawful for any person(s) to host or allow an event or gathering at any residence, premises or on any other private or

public property where alcohol or alcoholic beverages are present when the person knows or reasonably should know that an underage person will or does:

- (a) Consume any alcohol or alcoholic beverage; or
 - (b) Possess any alcohol or alcoholic beverage with the intent to consume it, and the person fails to take reasonable steps to present possession or consumption by the underage person(s).
- (2) A person is criminally responsible for violating this section if the person intentionally aids, advises, hires, counsels or conspires with 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 section.

(D) *Exceptions.* This section does not apply to the following persons or situations:

- (1) Conduct solely between an underage person and his or her parents while present in the parent's household;
- (2) Legally protected religious observances;
- (3) Licensed retail sellers of intoxicating liquor or 3.2% malt liquor licenses, municipal liquor stores or bottle club permit holders who are regulated by Minn. Stat. Chapter 340A, as it may be amended from time to time;
- (4) A landlord, mortgagee, hotel or motel owner or operator who has not actually participated in knowingly furnishing alcohol for an event or gathering;
- (5) Medical procedures or treatment authorized by a physician;
- (6) Law enforcement activities supervised by a law enforcement agency; or
- (7) When underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment

(E) *Penalty.* Any violation of this section is a misdemeanor.

(2001 Code, § 2005.24) (Ord. 09-07, passed - -)

TITLE XV: LAND USAGE

Chapter	
150.	BUILDING REGULATIONS
151.	FLOODPLAIN MANAGEMENT
152.	PARKLAND DEDICATION
153.	ZONING CODE

CHAPTER 150: BUILDING REGULATIONS

Section	
	<i>Building Code</i>
150.001	State Building Code adopted
150.002	Building Official and Building Department
150.003	Procedures and administration
150.004	Number on houses and buildings

- 150.005 Building permits; required information
- 150.006 Electrical permits
- 150.007 Mechanical permits
- 150.008 Sidewalk, curb and blacktop permits

International Property Maintenance Code

- 150.020 Adoption of International Property Maintenance Code
- 150.021 Modification to IPMC
- 150.022 Definitions
- 150.023 Additional property maintenance standards

Rental Dwellings

- 150.035 Purpose
- 150.036 Definitions
- 150.037 License required
- 150.038 Exemptions
- 150.039 Responsibility for acts of manager
- 150.040 Maintenance standards
- 150.041 Tiered fee system
- 150.042 STAR program
- 150.043 License denial, suspension or revocation
- 150.044 Summary action
- 150.045 Posted to prevent occupancy
- 150.046 No warranty by city

Hazardous Buildings or Property

- 150.060 Definitions
- 150.061 Removal by city; consent; cost
- 150.062 Exercise of eminent domain
- 150.063 Repair or removal of hazardous building; hazardous property conditions
- 150.064 Abatement
- 150.065 The order
- 150.066 Answer
- 150.067 Default cases
- 150.068 Contested cases
- 150.069 Enforcement of judgment
- 150.070 Statement of moneys received
- 150.071 Payment, tender, deposit in court

150.072 Personal property or fixtures

150.073 Securing vacant buildings

Moving Buildings

150.085 Definition

150.086 House mover's license

150.087 Building moving permit

150.088 Deposit for expense

150.089 Duties of Building Official

150.090 Conditions of permit

Signs

150.105 Policy; relation to zoning

150.106 Required permits

150.107 Exceptions

150.108 Unsafe signs

150.109 Conditions of permit

150.110 Temporary signs

Temporary Family Health Care Dwellings

150.125 Opt-out for temporary family healthcare dwelling regulations

BUILDING CODE

§ 150.001 STATE BUILDING CODE ADOPTED.

(A) The State Building Code, as adopted by the Commissioner of Labor and Industry pursuant to Minn. Stat. Chapter 326B, as it may be amended from time to time, including all of the amendments, rules and regulations established, adopted and published from time to time by the State Commissioner of Labor and Industry, through the Building Codes and Standards Unit, is hereby adopted by reference, with the exception of the optional chapters, as specifically adopted in this subchapter. The State Building Code is hereby incorporated in this subchapter as if fully set forth herein.

(B) The following optional chapters of Minnesota Rules are adopted and incorporated as part of the Building Code for the city: Chapter 1306 - Special Fire Protection Systems: the city shall enforce Chapter 1306.0020 Subpart 2 "Existing and New Buildings."

(2001 Code, § 400.01) (Ord. 03-07, passed - -; Ord. 07-21, passed - -)

§ 150.002 BUILDING OFFICIAL AND BUILDING DEPARTMENT.

The City Council, pursuant to Minn. Stat. § 326B.133, as it may be amended from time to time, will appoint a Building Official who will attend to all aspects of Building Code administration. Additional members of the City Building Department will be authorized by the City Council to assist the Building Official as needed.

(2001 Code, § 400.03) (Ord. 03-07, passed - -)

§ 150.003 PROCEDURES AND ADMINISTRATION.

(A) *Application, administration and enforcement.* The application, administration and enforcement of the State Building Code will be according to Minn. Stat. Chapter 16B, including all of the amendments, rules and regulations hereinafter adopted, as it may be amended from time to time.

(B) *Licensed activities.* Except as otherwise provided in this Code, it is unlawful for any person to perform any work subject to the provisions of the Building Code unless the person is currently licensed to do so under the applicable provisions of state law.

(C) *Permits, inspection and fees.* Permits will be issued, inspections conducted and fees collected as provided for in Minn. Stat. § 326B.121, as it may be amended from time to time, §§ 32.15 through 32.20 and City Council resolution. It is unlawful for any person to perform work subject to the Building Code for which a permit is required without having obtained a permit pursuant to §§ 32.15 through 32.20 and having paid the fees required by City Council resolution.

(D) *Surcharges.* In addition to the permit fee required under division (C) above, a surcharge fee shall be collected as prescribed by Minn. Stat. § 326B.148, as it may be amended from time to time.

(2001 Code, § 400.05) (Ord. 03-07, passed - -; Ord. 11-14, passed - -)

§ 150.004 NUMBER ON HOUSES AND BUILDINGS.

(A) *Numbers required.* For the proper identification of all houses and structures, an official house or building number, obtained from the City Planner, must be placed and maintained on each house or structure at or near the front entrance in such a manner that the number may be easily and clearly seen from the public street.

(1) If it is not practical to place a number at or near the building entrance, it must be placed and maintained by the owner in another suitable location so that it can be clearly seen from the public street.

(2) The house or building number required by this subchapter must consist of a series of figures with a minimum height of three inches, the surface of which must contrast with the color of the face of the building or structure upon which it is mounted.

(B) *Structures on alley.* In cases where a house or other structure is served primarily from a public alley, the official number must be placed and maintained at or near the rear entrance of the house or structure in such a manner that the number may be easily and clearly seen from the public alley.

(2001 Code, § 400.07) (Ord. 03-07, passed - -)

§ 150.005 BUILDING PERMITS; REQUIRED INFORMATION.

(A) *Content.* In addition to the requirements in §§ 32.15 through 32.20, each application for a building permit must be in writing on a form furnished for that purpose. The application must:

- (1) Identify and describe the work to be covered by the permit for which application is made;
- (2) Describe the land in which the proposed work is to be done, by lot, block, tract, house and street address, or similar description that will readily identify and definitely locate the proposed building or work;
- (3) Show the use or occupancy of all parts of the building;
- (4) Be accompanied by plans and specifications as required in this subchapter;
- (5) State the valuation of the proposed work;
- (6) Be signed by the permittee, or authorized agent, who may be required to submit evidence to indicate such authority;
- (7) Indicate type of construction; and
- (8) Provide any other information as reasonably may be required by the Building Official.

(B) *Plans and specifications.* With each application for a building permit, and when required by the Building Official for enforcement of any provision of this Code, two or more sets of plans and specifications must be submitted as required by the Building Official. The Building Official may require plans and specifications to be prepared and designed by an engineer or architect licensed by the state.

(C) *Information on plans and specifications.* Plans and specifications must conform to the following requirements:

- (1) Drawn to scale upon suitable material and electronically, if requested by the Building Official;
- (2) Be of sufficient clarity to indicate the nature and extent of the work proposed;
- (3) Show in detail that it will conform to the provisions of the Code, all relevant laws, ordinances, rules and regulations;
- (4) Provide the street address where the work will be performed;
- (5) Provide the name and address of the owner;
- (6) Provide the name and address of the person who prepared the plans;
- (7) Provide a site plan showing the location of any proposed or existing buildings; and
- (8) Provide other information that may be required by the Building Official.

(2001 Code, § 400.09) (Ord. 03-07, passed - -)

§ 150.006 ELECTRICAL PERMITS.

(A) *General provisions.*

(1) *Application.* This section applies to all installations of electrical conductors, fittings, devices and fixtures referred to as electrical equipment, within or on public and private buildings and premises. This section does not apply to installation in mines, ships, railway cars, aircraft, automotive equipment or to installations or equipment employed by a railway, electric or communication utility in the exercise of its functions as a utility, except as otherwise provided in this Code.

(2) *Definition.* As used in this section, **REASONABLY SAFE TO PERSONS AND PROPERTY**, as applied to electrical installations and electrical equipment, means safe to use in the service that the installation or equipment is intended without unnecessary hazard to life, limb or property.

(3) *Interpretation.* For purposes of interpretation of this section, the most recently published edition of the National Electrical Code will determine the definitions, interpretations, scope of the work and terms used in this section.

(B) *Electrical Inspector; emergencies.* In cases of emergency when necessary for safety to persons and property, or when electrical equipment may interfere with the work of the Fire Department, the Electrical Inspector has the authority to disconnect or cause immediate disconnection of any electrical equipment.

(C) *Permits.*

(1) *Permit required.* An electrical permit is required for each installation, alteration or addition of electrical work for light, heat and power in the city pursuant to §§ 32.15 through 32.20.

(2) *Exception.* No permit will be required for electrical installations of equipment owned, leased, operated or maintained by a public service corporation that is used by the corporation in the performance of its function as a utility, except that the electrical installation must conform to the minimum standards of the National Electric Safety Code.

(3) *State license.* In addition to the requirements in §§ 32.15 through 32.20, before any permit is granted for the installation or alteration of electrical equipment, the applicant must furnish proof of a valid state contractor's license.

(4) *Form.* Application for the permit describing the electrical work to be done must be made by the person registered to do the work. The application must be accompanied by the plans, specifications and schedules as may be necessary to determine whether the electrical installation as described will be in conformity with all the legal requirements.

(D) *Standards for electrical equipment installation.*

(1) *Safety.* All installations of electrical equipment must be reasonably safe to persons and property and in conformity with the provisions of this section and applicable state law and all orders, rules and regulations issued.

(2) *Compliance.* Conformity of installations of electrical equipment with applicable regulations in the current National Electrical Code, National Electrical Safety Code or electrical provisions of other safety codes which have been approved by the American

Standards Association, will be evidence that such installations are reasonably safe to persons and property, together with such additions and exceptions contained in this section. Noncompliance with the provisions of this section will be evidence that the installation is not reasonably safe to persons and property.

(3) *Moved buildings.* Buildings or structures moved into the city must conform to all of the requirements of this Code for new buildings or structures.

(4) *Existing buildings.* Existing buildings or structures that have been changed in use must conform in all respects to the requirements of this section for the new use.

(E) *Connections to installations.* It is unlawful for any person to make connections from a supply of electricity to any electrical equipment for the installation that a permit is required or that has been disconnected or ordered to be disconnected by the Electrical Inspector. The public or private utility providing services must disconnect the same upon a written order from the Electrical Inspector, if the Inspector considers any electrical installation unsafe to life and property or installed contrary to this section.

(F) *Inspections.*

(1) *Rough in inspection.* All electrical installations that involve the concealment of wiring or equipment must have a "rough in" inspection prior to concealment, and the Inspector must be duly notified in advance, excluding Saturdays, Sundays and holidays.

(2) *Hidden equipment.* When any electrical equipment is to be concealed by the permanent placement of parts of the building, the person, firm or corporation installing the equipment must notify the Electrical Inspector. The equipment must not be concealed until it has been inspected and approved by the Electrical Inspector or until 24 hours, exclusive of Saturdays, Sundays and holidays have elapsed from the time of such notification. For large installations, where the concealment of equipment is continuous, the person, firm or corporation installing the electrical equipment must give the Electrical Inspector due notice and inspections may be made periodically during the progress of the work.

(3) *Routine inspections and compliance.* At regular intervals, the Electrical Inspector will visit all premises where work may be done under annual permits and will inspect all electrical equipment installed since the previous inspection. The Electrical Inspector may issue a certificate of approval for the work if it is found to be in conformity with the provisions of this section.

(4) *Defects; notice.* When any electrical equipment is found by the Electrical Inspector to be dangerous to persons or property because it is defective or defectively installed, the person responsible for the electrical equipment will be notified in writing of the defective conditions. The person responsible must make any changes or repairs required in the judgment of the Electrical Inspector to place such equipment in safe condition within 15 days or any longer period that may be specified in the notice. If such work is not completed within the time allowed, the Electrical Inspector may disconnect or order a discontinuance of electrical service to the electrical equipment.

(2001 Code, § 410)

§ 150.007 MECHANICAL PERMITS.

(A) *Purpose.* The purpose of this section is to control the quality of workmanship in the installation and repair of all mechanical work in the city and to safeguard life, limb and property. **MECHANICAL WORK** includes, but is not limited to, plumbing, steam fitting, gas range piping and appliance installation, hot water and warm air heating and sheet metal, air conditioning and refrigeration, ventilation installation or repairs.

(B) *Permits required.* It is unlawful for any person to commence or proceed with the installing, repairing or constructing of any mechanical work for which a permit is required in the Building Code without first having obtained a permit from the city pursuant to §§ 32.15 through 32.20. Permits must be issued per building, or per unit in permanently divided commercial or industrial buildings; per owner occupied, or potentially owner occupied residential unit; per apartment building; or per apartment type condominium building. Permits are assumed to be for a completed installation or repair, but a partial permit may be issued at an applicant's request.

§ 150.008 SIDEWALK, CURB AND BLACKTOP PERMITS.

(A) No person may lay, re-lay, repair or reconstruct any sidewalk, gutter, driveway, or curb made of concrete or asphalt or other bituminous substance ("blacktop") without a permit.

(B) Barricades and lights must be erected when required by the city.

§ 150.020 ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE.

The International Property Maintenance Code ("IPMC"), as amended from time to time, is hereby adopted by reference and incorporated into the city code in whole as if it were set out in full, subject to the amendments contained in this subchapter. A copy of the International Property Maintenance Code is on file in the office of the Building Official.

(Ord. 15-08, passed 9-14-2015)

§ 150.021 MODIFICATION TO IPMC.

The following provisions of the IPMC are modified as follows:

(A) Section 102.3 of the IPMC is replaced as follows:

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 Minnesota Statutes §§ 16B.59 to 16B.75, as amended from time to time, and 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 West St. Paul City Code.

(B) Section 102.7 of the IPMC is replaced as follows:

Provisions in referenced codes and standards. The codes and standards referenced in this Code shall be those listed in Chapter 8 of the IPMC, and shall be 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 MSBC, the most restrictive shall apply.

(C) Section 103.1 of the IPMC is replaced as follows:

General. The Community Development Department of the City is responsible for administering the provisions of this Code, and the official in charge thereof shall be known as the Code Official.

(D) Section 302.3 of the IPMC is replaced as follows:

Sidewalks and driveways. All parking and driveway areas must be maintained and free of hazardous conditions including but not limited to large cracks, potholes, dirt, sand, glass, trash, and debris, including shopping carts and other storage or carrying devices. December 1 through April 15 of each year, sand or other abrasive materials may be applied to paved surfaces to aid traction. However, all materials must be removed by April 15 of each year. Parking areas must be marked with painted stripes to delineate the parking spaces and driving areas, and the paint must be maintained in good condition.

(E) The following Sections of the IPMC are deleted: Section 104.3 - Right of entry; Section 106 - Violations; Section 107 - Notices and Orders; Section 109.6 - Hearing; Section 110 - Demolition; Section 111 - Means of Appeal; Section 302.8 - Motor Vehicles; and Section 302.9 - Defacement of property.

(F) The following definitions in Section 202 are deleted and replaced with Definitions in City Code § 150.022: Code Official, Dwelling Unit, Let for Occupancy.

(Ord. 15-08, passed 9-14-2015)

§ 150.022 DEFINITIONS.

Except as expressly provided in this section, words, terms, and phrases used in this section have the meanings given them by this code or the Zoning Ordinance. In cases where conflict definitions of a word, term, or phrase make its precise meaning unclear in its application to particular facts, the applicant can appeal to the Zoning Administrator.

CELLAR. A portion of a building located partly or wholly underground, and having three-quarters or more than three-quarters of its clear floor-to-ceiling height below the average grade of the adjoining ground.

CODE OFFICIAL. The following city employees who are authorized to enforce this subchapter: Licensed peace officers, Police

Reserves, and Community Service Officers of the West St. Paul Police Department; Code Enforcement Officers; Animal Control Officer; Community Development Director; Zoning Administrator; Building Official; Building Inspector; City Engineer; City Clerk; Fire Chief, Fire Marshal, or Fire Inspector of the South Metro Fire Department.

DWELLING UNIT. A building or portion thereof, excluding garages, which contains living facilities including provisions for sleeping, eating, cooking and sanitation for not more than one family or a congregate residence for ten or less persons.

EXTERMINATION. The control and elimination of insect, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the health officer of the state Department of Health.

LET FOR OCCUPANCY. To permit possession or occupancy of a dwelling or rental dwelling unit whether or not compensation is paid by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease.

MULTIPLE DWELLING. A building designed for or occupied exclusively by three or more families.

PLUMBING. All of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch sinks, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

SUPPLIED. Paid for, furnished or provided by or under the control of the owner or operator.

WATER AND SEWER SYSTEM APPROVED BY THE BUILDING INSPECTOR. Includes private wells, public water utility mains, private septic tank, sewage disposal systems and public sewer mains.

(Ord. 15-08, passed 9-14-2015)

§ 150.023 ADDITIONAL PROPERTY MAINTENANCE STANDARDS.

The following additional standards shall supplement the IPMC:

(A) *Fence maintenance.* Fences must be maintained in good condition both in appearance and in structure. Wood material, other than decay resistance varieties, must be protected against decay by use of paint or other preservatives.

(B) *Retaining walls.*

(1) *Permit required.* No person may erect or construct a retaining wall which is not a part of a building and which is 48 inches or more in height, without first obtaining a permit from the Building Official. No permit shall be required for any such retaining wall less than 48 inches unless:

(a) The wall contains footings;

(b) The wall is constructed in conjunction with or adjacent to a fence;

(c) The wall is intended to provide support for a structure; or

(d) The wall is constructed of solid masonry building material such as building block, cinder block, brick, stone, marble, granite, cement, concrete or material deemed similar by the Building Official. An applicant for the issuance of a permit may be required to furnish a plan or drawing showing the construction of the wall and containing such data as reasonably deemed necessary by the Building Official.

(2) *Construction requirements.* All retaining walls shall be designed according to the State Building Code. All masonry walls other than poured concrete or solid masonry units shall be protected with an approved coping. No retaining wall may be constructed in a manner so as to provide shelter for rodents.

(3) *Retaining wall maintenance.* Retaining walls must be maintained in a structurally sound, safe and secure manner. A retaining wall is deemed not in compliance with this section when it has substantially shifted or moved from its intended position, or it is no longer plumb.

(4) *Encroachment into public property.* No portion of any retaining wall may encroach upon or project into any street, boulevard, alley, park or other public property without the owner first obtaining approval from the City Council. The owner of any such retaining wall that projects or encroaches upon any public property must remove any part or all of the encroaching portions of the wall

upon being ordered to do so by the City Council.

(C) *Yard cover.* Exposed areas surrounding or within a principal accessory use, including street boulevards that are not devoted to parking, driveways, sidewalks, patios or other such uses, must be landscaped with grass, shrubs, trees or other ornamental landscape material. The landscaping shall be maintained in good condition and free of noxious weeds.

(D) *Driveways.* All of the areas used for driveways and parking spaces must comply with § 153.347(D).

(E) *Trash enclosures.* Trash enclosures may not be located in the front or side yard adjacent to a street. All trash areas that are visible from any public right-of-way will be screened on all sides. Trash must not exceed the height of the screening. Required screening will be at least 95% opaque throughout the year, unless otherwise specified. Screening will be designed to be compatible with the architectural treatment of the principal building. All screening is subject to the regulations of § 153.381, governing fences. One or a combination of the following will satisfy the required screening:

- (1) A decorative fence;
- (2) A masonry wall;
- (3) A hedge.

(F) *Vegetation and landscaping.* Vegetation must be installed according to §§ 153.031 and 153.032, and the site and building plan approval process. Installation and maintenance of all landscape materials must comply with the following standards:

(1) Areas to be landscaped must be prepared and improved as specified by current Minnesota Department of Transportation standards for soil preparation and drainage.

(2) All landscape materials must be installed to current industry standards.

(3) Maintenance and replacement of landscape materials will be the responsibility of the applicant or property owner, including the maintenance of any trees planted in the public right-of-way. An adequate water supply must be indicated in the site plan. Landscape maintenance should incorporate environmentally sound management practices, including the following:

- (a) The use of water and energy efficient systems.
- (b) Pruning primarily for plant health and replacing dead materials annually.

Any tree, brush, or shrub that grows against any building or fence that represents a hazard to the structural integrity of the building or fence, must be removed or trimmed to prevent damage. Any trees, tree limbs, brush, or shrubs that are dead, damaged and hazardous will be deemed a public nuisance pursuant to Chapter 94 and may be abated.

(Ord. 15-08, passed 9-14-2015)

RENTAL DWELLINGS

§ 150.035 PURPOSE.

It is the purpose of this subchapter to protect the public health, safety and welfare of citizens of the city who live in rental units by adopting a rental dwelling inspection and maintenance program that corrects substandard conditions and maintains a standard for existing and newly constructed rental dwellings in the city. The operation of rental properties is a business enterprise that includes certain responsibilities. Rental owners, operators and managers are responsible to take such reasonable steps as are necessary to ensure that the citizens who occupy such rental units, as well as neighboring properties, may pursue the quiet enjoyment of the normal activities of life in surroundings that are safe, secure, and sanitary, free from noise, nuisances and annoyances, and free from unreasonable fears about safety of persons and property.

(Ord. 15-09, passed 9-14-2015)

§ 150.036 DEFINITIONS.

Words used in this subchapter shall have the following meanings unless otherwise defined in this subchapter.

ALTERNATIVE INSPECTION REPORT. A rental dwelling inspection report that the applicant obtains from a building inspector for the purposes of receiving United States Department of Housing and Urban Development ("HUD") rental approval.

APARTMENT. A community, complex or building having a common owner and containing at least one rental dwelling unit.

CITY INSPECTOR'S REPORT or **INSPECTION REPORT.** A rental dwelling inspection report prepared and signed by a city inspector.

CITY MANAGER. The West St. Paul City Manager or his or her designee.

COMPLEX. The total number of buildings on the license application or contiguous rental properties under the same ownership.

DWELLING. A building or one or more portions of a building occupied or intended to be occupied for residential purposes.

FAMILY.

(1) An individual or two or more persons legally related by blood, marriage, foster care or adoption in a linear relationship such as spouses, grandparents, parents, children, grandchildren and siblings, but not aunts, uncles or cousins; or

(2) A group of not more than three persons not related by blood or marriage living together in a dwelling unit.

HIGH SCHOOL DORMITORY. A dormitory that is located on the site of a secondary education institution and is owned, operated and used by the institution for living and sleeping quarters for the students attending the institution.

LET FOR OCCUPANCY or to **LET** or to **RENT.** To permit possession or occupancy of a dwelling or rental dwelling unit whether or not compensation is paid by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease.

OCCUPANT. Any person living or sleeping in a dwelling unit, or having possession of a space within a dwelling unit.

OPERATOR or **MANAGER.** Any person who has charge, care or control of a structure or premises that is let or offered for occupancy.

OWNER or **LICENSEE.** Any person, agent, operator, firm or corporation having a legal or equitable interest in the property or recorded in the official state, county or city records as holding title to the property or otherwise having control of the property.

PERSON. May be an individual, corporation, firm, association, company, partnership, organization or any other group acting as a unit.

REINSPECTION. A follow-up inspection that is:

(1) Conducted to determine if a code violation has been corrected;

(2) Necessary because a licensee, owner or other responsible party fails to attend a scheduled inspection;

(3) Necessary because a scheduled inspection does not occur or is prevented from occurring due to an act of a property owner or agent; or

(4) Any inspection following an initial inspection.

RENTAL DWELLING. Any dwelling used for residential occupancy by one or more persons who are not the owner or a member of the owner's family.

RENTAL DWELLING UNIT. Any room or rooms, or space, in any rental dwelling designed or used for residential occupancy by one or more persons who are not the owner or a member of the owner's family.

(2001 Code, § 435.03) (Ord. 06-16, passed - -; Ord. 07-04, passed - -; Ord. 08-25, passed - -; Ord. 15-09, passed 9-14-2015)

§ 150.037 LICENSE REQUIRED.

(A) *General rule.* No person, partnership, business entity, or corporation shall operate a rental dwelling or rental dwelling unit in the city without a license for each building pursuant to Chapter 110. No property owner shall be permitted to license more than three single-family residences as rental properties, unless the property owner:

(1) Hires a property management company who is licensed by the Commerce Department; or

(2) Is a public housing agency; or

(3) Obtains a special exception from the City Council.

(B) *Applications.* In addition to the application information requirements of § 110.03, the license application must contain the following information:

(1) *Property owner information.*

(a) The name, address and complete information of the property owner, if the property owner is an individual.

(b) The name, address and complete information of at least one officer, manager or director, if the property owner is a business entity.

(2) *Property contact information.* For single-family residential dwellings, the license applicant must provide 24 hour contact information for one person in any of the following categories. For all other types of dwellings, the license applicant must provide 24 hour contact information for two people in any of the following categories:

(a) At least one owner of the rental dwelling or rental dwelling unit;

(b) At least one person, if different from the owner, who is responsible for compliance with this and any other code requirement pertaining to the rental dwelling or rental dwelling unit, such as a property manager, who must reside in the Twin Cities 7-County metropolitan area;

(c) Any of the owner's agents responsible for management of the rental dwelling or rental dwelling unit, such as a property management company and the name and contact information of a person at the property management company; or

(d) Any vendors and all vendees, if the rental dwelling or rental dwelling unit is being sold pursuant to a contract for deed.

(e) The City Clerk must be notified in writing of any changes to the name(s) provided on the application.

(3) *Number and type of units.* The license application must contain the number of units and types of units (condominium, apartment, town home and the like) within the rental dwelling.

(4) *Inspection report.* The license application must be accompanied by a satisfactory city approved inspector's report or an alternative inspection report.

(a) For owners with one to three dwelling units, the inspection report is required every 36 months and due upon annual renewal of the license. Alternative inspection reports must be dated within the 36 months preceding the application date. For owners with one to three dwelling units, an inspection is required if there is a change in ownership and the inspection report is dated more than 18 months prior to the date of the application.

(b) For owners with more than three dwelling units, the inspection report is required every 12 months and due upon annual renewal of the license. Alternative inspection reports must be dated within the 12 months preceding the application date. An owner with more than three dwelling units shall submit annual inspection reports for at least one-fourth of the total number of dwelling units for each building. Every four years, all dwelling units in each building must have undergone an inspection. An inspection is required if there is a change in ownership and the inspection report is dated more than six months prior to the date of application for owners with more than three dwelling units.

(5) *Inspection scheduling.* The City Clerk or designee shall schedule the initial inspection for all new and renewal applications. A property owner or agent is required to be onsite during the scheduled inspection. A property owner or agent may cancel or re-schedule an inspection no less than 24 hours of the scheduled inspection time or a re-inspection fee will apply.

(C) *Investigations.*

(1) For all new applications, a background investigation will be conducted on the property owner listed on the application, pursuant to § 110.03(C)(5). The city may request additional information from the license applicant regarding all property owners, if the property is owned by individuals or regarding all officers, managers or directors, if the property is owned by a business entity, and may conduct additional background investigations as it deems necessary. The applicant shall pay a background investigation fee for each background investigation conducted.

(2) For renewal applications, background investigations are not required and no background investigation fee shall be required,

however, the Police Department or other city staff may conduct a background investigation at its sole discretion.

(D) *Changes in ownership.* A license is non-transferable. If there is a change in the ownership of the rental dwelling or rental dwelling unit, a new license is required.

(E) *Changes in the rental dwelling or rental dwelling unit.* If changes are made in the number or type of units, the owner shall amend its license.

(F) *Annual license.* Persons wishing to let rental dwellings or rental dwelling units must make an annual application to the city, provide the information required by this subchapter and pay the applicable license fee, as set forth in § 150.041. Renewal applications that qualify for a license in Category A, as defined in § 150.041, may be approved administratively by the Community Development Director. All other license applications must be approved by the City Council.

(G) *License term.* The term of the license is a 12-month rolling calendar. For renewal applicants, the license period shall commence on the first day of the month after the expiration of the previous license period, as determined by the City Clerk, or for new applicants, the license period shall commence on the first day of the month after the license is approved by the City Council. All licenses expire at the end of each 12-month period.

(H) *Tenant register.* As a condition of the license, the applicant must, as a continuing obligation, maintain a current register of tenants and other persons who have a lawful right to occupancy of rental dwellings or rental dwelling units. In its application, the applicant must designate the name of the person or persons who will have possession of the register and must promptly notify the City Manager of any change in the identity, address or telephone numbers of such person. The register must be available for inspection by city officials at all times.

(I) *Notification requirements for public hearings.* The owner must, as a continuing obligation of the license, provide written notice to tenants or in the alternative, post the written notice in the lobby or common area of the rental dwelling for any public hearing received by the owner that pertains to the property on which the rental dwelling is located or any adjacent rights-of-way.

(J) *Display of license certificate.* Pursuant to § 110.08, the license certificate must be exhibited in a conspicuous place at or near the entrance to the rental dwelling. One license certificate must be displayed for each building. For buildings containing one to three dwelling units, the certificate must be visible from the street. For buildings containing more than three dwelling units, the certificate must be displayed in the rental office or other common area accessible to all tenants of the licensed building.

(K) *Compliance with Minn. Stat. § 211B.20, as it may be amended from time to time.* Owners must comply with the requirements of Minn. Stat. § 211B.20, as it may be amended from time to time, and allow access to candidates who have filed for election to public office and seek admittance to the rental dwelling solely for the purpose of campaigning.

(L) *Rental density for single-family rental dwellings.*

(1) In an R-1 Zoning District, no more than 10% of the single-family lots on any block shall be eligible to obtain a rental license, unless a temporary license is granted by the City Council as provided herein. Table 1 indicates how many single-family lots per block are able to be licensed as a rental property based on the number of lots that exist in a block.

<i>Table 1</i>	
<i>Lots/Block</i>	<i>Rental Units Allowed</i>
1-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-64	6
65-74	7

75-84	8
85-94	9

(2) The following guidelines shall apply to determine eligible blocks and lots.

(a) For the purposes of this subchapter, a **BLOCK** shall be defined as an area of land enclosed within the perimeter of streets, watercourses, public parks, municipally owned lots and city boundaries.

(b) This subchapter shall apply to legally conforming lots of record and legally nonconforming lots of record. For the purposes of this subchapter, lots of record may also be referred to as **PROPERTIES**, **PROPERTY** or **LOTS**.

(c) If a block contains more than one type of zoning district, only R-1 Zoning District lots shall be included in the calculation of the total number of lots per block.

(d) Legal nonconforming rental property shall not be included in the calculation of the total number of lots per block, but shall be allowed to continue as long as the legal nonconforming use complies with § 153.006 of the Zoning Code.

(e) Commercial or industrial uses located in an R-1 Zoning District shall not be included in the calculation of the total number of lots per block.

(f) Properties that are exempt pursuant to § 150.038 shall not be included in the calculation of the total number of lots per block.

(3) If the number of rental properties meets or exceeds the permitted number of rental properties per defined block on the effective date of this subchapter, no additional rental licenses shall be approved for the block, unless a temporary license is granted by the City Council as provided herein. Existing rental licenses may be renewed; however, should a rental license not be renewed, or if the rental license is revoked or lapses, the rental license shall not be reinstated unless it is in conformance with this subchapter and other applicable sections of the city code.

(4) If the number of rental properties meets or exceeds the permitted number of rental properties per defined block on the effective date of this chapter, a property owner may request a temporary license to allow an additional rental property for that block. The property owner must hire a licensed professional property management company to manage the property. The Council may grant or deny a temporary license in its sole discretion. Persons requesting a temporary license must make an annual application to the city. No property owner shall hold a temporary license for the same property for more than two consecutive years.

(M) *Crime-Free Lease Addendum*. As a condition of the license, the applicant must use the Minnesota Crime-Free Lease Addendum or its equivalent, as part of its leases.

(N) *Phase One - Management Training*. As a condition of the license, the applicant or manager of each licensed building must complete Phase One - Management Training of the three phases of the Minnesota Crime Free Rental-Housing program, as defined in § 150.042(A)(1)(e), within 12 months of City Council approval of the rental license.

(O) *Tenant background checks and lease agreements*. Upon request, provide a copy of third party or comparable background checks for tenants and a copy of the lease.

(P) *Contracts for deed*. A property sold pursuant to a contract for deed must be recorded against the property or the property will be deemed rental property and a license will be required.

(2001 Code, § 435.05) (Ord. 06-16, passed - -; Ord. 11-12, passed - -; Ord. 15-09, passed 9-14-2015)

§ 150.038 EXEMPTIONS.

This subchapter does not apply to the following:

(A) Hotels

(B) Motels

(C) Hospitals

(D) State-licensed residential care facilities

(E) Assisted living facilities

(F) Nursing homes

(G) High school dormitories

(H) Single-family homes or duplexes in which the owner resides within a portion of the building and there are a total of no more than three unrelated persons within the owner's dwelling unit. If the building is a duplex, only that portion of the building in which the owner resides is exempt. The other portion of the duplex requires a rental license.

(2001 Code, § 435.07) (Ord. 06-16, passed - -; Ord. 08-25, passed - -; Ord. 08-26, passed - -; Ord. 15-09, passed 9-14-2015)

§ 150.039 RESPONSIBILITY FOR ACTS OF MANAGER.

Licensees are responsible for the acts or omissions of their managers as it pertains to the rental dwelling.

(2001 Code, § 435.09) (Ord. 06-16, passed - -; Ord. 15-09, passed 9-14-2015)

§ 150.040 MAINTENANCE STANDARDS.

(A) It is the responsibility of the licensee to assure that every rental dwelling and rental dwelling unit is maintained in compliance with all city ordinances and state laws. A violation of any of the following laws and ordinances constitutes a public nuisance:

- (1) Building Code (§§ 150.001 through 150.008);
- (2) International Property Maintenance Code (§§ 150.020 through 150.023);
- (3) Animal regulations (Chapter 90);
- (4) Fire Prevention Code (Chapter 91);
- (5) Repeat nuisance service calls (§§ 34.15 through 34.19);
- (6) Parked or stored motor vehicles (§ 72.05(D)); and
- (7) Public nuisance regulations (Chapter 94).

(B) *License hearing.* Upon the occurrence of .5 violations of the above-stated provisions multiplied by the total number of dwelling units per complex within a 12-month period, or a violation of a Category C mitigation plan as defined in § 150.041(B), the City Council may hold a license hearing pursuant to § 110.12 for consideration of suspension, revocation or conversion to a provisional license. Depending upon the circumstances, nature and severity of the violation, the City Council may hold a license hearing for fewer than .5 violations, if deemed appropriate.

(C) *Inspections.* The Building Official, Building Inspector, Rental Housing Inspector, Fire Department personnel, police officers and their respective representatives, are authorized to make inspections reasonably necessary to enforce this subchapter. All authorized inspectors have the authority to enter any rental dwelling or rental dwelling unit at all reasonable times. Each occupant of a rental dwelling or rental dwelling unit shall give the owner, the owner's agent or authorized city official access to any part of such rental dwelling or rental dwelling unit at reasonable times for the purpose of inspection, maintenance, repairs or alterations as are necessary to comply with the provisions of this subchapter. If any owner, owner's agent or occupant of a rental dwelling or rental dwelling unit fails or refuses to permit entry to a rental dwelling or rental dwelling unit for an inspection pursuant to this subchapter, the inspector may seek an administrative search warrant authorizing such inspection.

(2001 Code, § 435.11) (Ord. 06-16, passed - -; Ord. 15-09, passed 9-14-2015)

§ 150.041 TIERED FEE SYSTEM.

(A) *License categories.* Licenses will be issued based on a tiered fee system according to license type as indicated in Table 1. The fees shall be set by City Council resolution. The period of time used to determine the tiered fee is the 12-month period ending two months before the commencement of the license term.

Table 1	
Category Type	Property Code Violations and Validated City Service Calls per Complex
Category A	Less than 3 dwelling units:
	No validated city service calls/code violations per complex in a preceding 12-month period.
	More than 3 dwelling units:
	Less than .25 validated city service calls/code violations multiplied by the total number of dwelling units per complex in a preceding 12- month period.
Category B (includes all new rental license applicants)	Less than 3 dwelling units:
	1-3 validated city service calls/code violations multiplied by the total number of dwelling units per complex in a preceding 12-month period.
	More than 3 dwelling units:
	.25 to .5 validated city service calls/code violations multiplied by the total number of dwelling units per complex in a preceding 12-month period.
Category C	Less than 3 dwelling units:
	Over 3 validated city service calls/code violations multiplied by the total number of dwelling units per complex in a preceding 12-month period.
	More than 3 dwelling units:
	Over .5 validated city service calls/code violations multiplied by the total number of dwelling units per complex in a preceding 12-month period.

(B) *Category C requirements.* Rental license applicants who meet the definition of Category C may be issued a provisional license and must pay a provisional license fee set by the City Council. In addition, the applicant must provide a written mitigation plan to reduce the number of city service calls/code violations. If the property owner violates the mitigation plan, City Council may hold a license hearing, as defined in § 150.040(B).

(C) *Qualifying city service calls/code violations.* Licensed dwellings that have generated city service calls or code violations as

indicated in the fee resolution in a preceding 12-month period as specified in this section shall be subject to the tiered fee system.

(1) City service calls and code violations that are used to determine the appropriate tiered fee system category include the following types of calls or events:

(a) City service calls and code violations listed in § 150.040(A).

(b) City service calls or events categorized as part one crimes in the uniform crime reporting system, including homicide, rape, robbery, aggravated assault, burglary, theft, auto theft and arson.

(c) City service calls or events categorized by the Police Department: miscellaneous juvenile status crimes, liquor offenses or curfew violations; disturbing the peace or harassing communications; property damage; criminal damage to property or trespass; domestic incidents (except as provided in § 150.041(C)(2)); fire alarms; fire code; public disturbance or disorderly conduct; loud party or noise complaints; disorderly juveniles; assault in the fifth degree or non-domestic related assaults. The Police Chief shall maintain for public inspection a description of the coding system and a list of the codes and crimes included within each of these categories of calls or events.

(d) The Police Chief may determine that multiple incidents shall be counted as a single call in appropriate cases.

(2) Calls will not be counted for purposes of determining the appropriate tiered fee system Category when the victim and suspect are "family" or "household members" as defined in the Domestic Abuse Act, Minn. Stat. § 518B.01, Subd. 2(b), as it may be amended from time to time, and when there is a report of "Domestic Abuse" as defined in the Domestic Abuse Act, Minn. Stat. § 518B.01, Subd. 2(a), as it may be amended from time to time, or when the tenant is the victim of an order for protection violation under Domestic Abuse Act, Minn. Stat. § 518B.01, Subd. 14, as it may be amended from time to time, except when the victim consented to a violation of a court order and the violation resulted in the city service call.

(Ord. 15-09, passed 9-14-2015)

§ 150.042 STAR PROGRAM.

To promote crime-free housing, the city encourages rental property owners to voluntarily participate in Level 1 or Level 2 of the STAR Program. A STAR Program application form must be completed and submitted with the license application in order for an owner to participate in the STAR Program.

(A) *More than three dwelling units.* For owners with more than three dwelling units, the following criteria set forth the STAR requirements for each participation level.

(1) *Level 1.* To qualify for Level 1, owners or managers shall comply with the following:

(a) Provide the city a copy of rental criteria regarding tenants with criminal backgrounds.

(b) Actively pursue the eviction of noncompliant tenants.

(c) Attend 25% of Responsible Owners and Managers Association (ROMA) meetings.

(d) Have no unresolved City Code violations.

(e) Within 12 months of joining the STAR Program, complete Phase 2 or Phase 3 of the Minnesota Crime-Free Rental-Housing program. The phases of the Minnesota Crime-Free Rental- Housing program are:

1. *Phase One- Management Training.* Resident managers and/or owners attend an eight-hour seminar presented by police, fire, public housing and others.

2. *Phase Two- Security Assessment.* This phase will certify that the rental property has met the security requirements for the tenant's safety.

3. *Phase Three- Resident Training.* A meeting is held for the residents where crime watch and crime prevention techniques are discussed.

(2) *Level 2.* To qualify for Level 2, owners and managers shall achieve Level 1 and add the following:

(a) Within 12 months of joining the STAR Program, complete Phase 2 and Phase 3 of Crime-Free Rental-Housing training and receive a certificate of completion by the city, as defined in § 150.042(A)(1)(e).

(b) Attend 50% of ROMA meetings.

(B) *One to three dwelling units.* For owners with one to three dwelling units, the following criteria set forth the STAR requirements for each participation level.

(1) *Level 1.* To qualify for Level 1, owners and managers shall comply with the following.

(a) Actively pursue the eviction of noncompliant tenants.

(b) Have no unresolved city code violations.

(2) *Level 2.* To qualify for Level 2, owners and managers shall achieve Level 1 and add the following:

(a) Within 12 months of joining the STAR Program, complete Phase 2 and Phase 3 of the Crime-Free Rental-Housing training and receive a certificate of completion by the city, as defined in § 150.042(A)(1)(e).

(b) Attend 50% of ROMA meetings.

(2001 Code, § 435.13) (Ord. 06-16, passed - - ; Ord. 15-09, passed 9-14-2015)

§ 150.043 LICENSE DENIAL, SUSPENSION OR REVOCATION.

(A) *Grounds for denial, suspension or revocation.* The City Council may deny, revoke or suspend a license pursuant to § 110.12. During a suspension, the property for which the suspension occurred shall be included for purposes of calculating the number of eligible lots per block, unless it is otherwise ineligible pursuant to § 150.037(L).

(B) *Violations.* A violation of this subchapter is a misdemeanor. However, the city may issue an administrative citation pursuant to § 10.98.

(C) *Notification to tenants.* Upon suspension, revocation or denial of a license, or if the dwelling unit is not licensed, the city will notify all affected tenants.

(2001 Code, § 435.15) (Ord. 06-16, passed - - ; Ord. 15-09, passed 9-14-2015)

§ 150.044 SUMMARY ACTION.

(A) *Emergency.* When the conduct of any owner or owner's agent, representative, employee or lessee, or the condition of the rental dwelling or rental dwelling unit, or the property in or on which it is located, is detrimental to the public health, sanitation, safety and general welfare of the community, or residents of the rental dwelling or rental dwelling unit so 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 individual rental dwelling units or areas of the rental dwelling as the Building Official deems necessary.

(B) *Notice.* Notice of summary action will be posted at the units or areas affected and will describe the units or areas affected. No person shall remove the posted notice, other than the Building Official or a designated representative.

(C) *Appeal.* Any person aggrieved by a decision or action of the Building Official to condemn all or part of a rental dwelling shall be entitled to appeal to the Council by filing a notice of appeal with the City Manager. The Manager must schedule a date for hearing before the Council and notify the aggrieved person of the date.

(2001 Code, § 435.17) (Ord. 06-16, passed - - ; Ord. 11-12, passed - - ; Ord. 15-09, passed 9-14-2015)

§ 150.045 POSTED TO PREVENT OCCUPANCY.

Whenever any rental dwelling or rental dwelling unit is found to be unfit for human habitation under § 150.040, it shall be posted by the Building Official on the door of the rental dwelling or rental dwelling unit, whichever the case may be, to prevent further occupancy. No person, other than the Building Official, shall remove or alter any posting. The Building Official will post the date the rental dwelling or rental dwelling unit shall be vacated and no person shall reside in, occupy or cause to be occupied that rental dwelling or rental dwelling unit until the Building Official or Council permits it.

(2001 Code, § 435.19) (Ord. 06-16, passed - - ; Ord. 15-09, passed 9-14-2015)

§ 150.046 NO WARRANTY BY CITY.

By enacting and undertaking to enforce this subchapter, neither the city, nor its Council, agents or employees warrant or guaranty the safety, fitness or suitability of any rental dwelling or rental dwelling unit in the city. Owners and occupants should take appropriate steps to protect their interests, health, safety and welfare.

(2001 Code, § 435.21) (Ord. 06-16, passed - - ; Ord. 15-09, passed 9-14-2015)

HAZARDOUS BUILDINGS OR PROPERTY

§ 150.060 DEFINITIONS.

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

HAZARDOUS BUILDING or HAZARDOUS PROPERTY. Any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition or abandonment, constitutes a fire hazard or a public safety or health hazard.

NEIGHBORHOOD ASSOCIATION. An organization recognized by the city as representing a neighborhood within the city.

SECURE. Includes, but is not limited to, installing locks, repairing windows and doors, boarding windows and doors, posting "no-trespassing" signs, installing exterior lighting or motion-detecting lights, fencing property and installing a monitored alarm or other security system.

(2001 Code, § 902.01)

§ 150.061 REMOVAL BY CITY; CONSENT; COST.

The City Council may remove or raze any hazardous building or remove or correct any hazardous condition of real estate upon obtaining the consent in writing of all owners of record, occupying tenants and all lien holders of record; the cost is charged against the real estate pursuant to § 150.069, except the governing body may provide that the cost so assessed may be paid in five or less equal annual installments, with interest at 8% per annum.

(2001 Code, § 902.03)

§ 150.062 EXERCISE OF EMINENT DOMAIN.

(A) *Purpose; public interest.* In order to maintain a sufficient supply of adequate, safe and sanitary buildings used for housing, commercial, industrial or other purposes, or any combination of purposes, it is found that the public interest requires that the City Council be authorized to acquire buildings, real estate on which buildings are located, or vacant or undeveloped real estate which is found to be hazardous, and the acquisition of the buildings and real estate is declared to be a public purpose, pursuant to Minn. Stat. § 463.152, as it may be amended from time to time.

(B) *Acquisition; procedure.* In furtherance of the public policy declared in division (A) above, the City Council may, by eminent domain, acquire any hazardous building, real estate on which any such building is located, or vacant or undeveloped real estate.

(2001 Code, § 902.05)

§ 150.063 REPAIR OR REMOVAL OF HAZARDOUS BUILDING; HAZARDOUS PROPERTY CONDITIONS.

The City Council may order the owner of any hazardous building or property within the city to correct or remove the hazardous

condition of the building or property or to raze or remove the building.

(2001 Code, § 902.07)

§ 150.064 ABATEMENT.

The City Council may correct or remove the hazardous condition of any hazardous building or property, and the cost of the correction or removal may be charged against the real estate pursuant to § 150.069, except the City Council may provide that the cost may be paid in five or less equal annual installments with interest at 8% per annum.

(2001 Code, § 902.09)

§ 150.065 THE ORDER.

(A) *Contents.* The order must be in writing; recite the grounds; specify the necessary repairs, if any; provide a reasonable time for compliance; and state that a motion for summary enforcement of the order will be made to County District Court unless corrective action is taken or unless an answer is filed within the time specified pursuant to § 150.066.

(B) *Service.* The order must be served upon the owner of record or the owner's agent, if an agent is in charge of the building or property, and upon the occupying tenant, if there is one, and upon all lien holders of record, in the manner provided for service of a summons in a civil action. If the owner cannot be found, the order must be served upon the owner by posting it at the main entrance to the building or, if there is no building, in a conspicuous place on the property, and by four weeks' publication in the official newspaper.

(C) *Filing.* A copy of the order with proof of service must be filed with the County Court Administrator not less than five days prior to the filing of a motion pursuant to § 150.067 to enforce the order. At the time of filing such order, the city shall file for record a notice of the pendency of the proceeding with the County Recorder or Registrar of Titles, describing with reasonable certainty, the lands affected and the nature of the order. If the proceeding is abandoned, within ten days the city must file a notice with the County Recorder to that effect.

(2001 Code, § 902.11)

§ 150.066 ANSWER.

Within 20 days from the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying the facts in the order as are in dispute.

(2001 Code, § 902.13)

§ 150.067 DEFAULT CASES.

If no answer is served, the City Council may move the court for the enforcement of the order. If such a motion is made, the court may, upon the presentation of such evidence as it may require, affirm or modify the order and enter judgment accordingly, fixing a time after which the City Council may proceed with the enforcement of the order.

(2001 Code, § 902.15)

§ 150.068 CONTESTED CASES.

(A) If an answer is filed and served pursuant to § 150.066, further proceedings in the action is governed by the Rules of Civil Procedure, except that the action has priority over all pending civil actions and is tried forthwith.

(B) If the order is sustained following the trial, the court will enter judgment and shall fix a time after which the building must be destroyed or repaired or the hazardous condition removed or corrected, as the case may be, in compliance with the order as originally filed or modified by the court.

(C) If the order is not sustained, it is annulled and set aside.

(D) The Court Administrator of the court will cause a copy of the judgment to be mailed to the persons upon whom the original order was served.

(2001 Code, § 902.17)

§ 150.069 ENFORCEMENT OF JUDGMENT.

(A) If a judgment is not complied with in the time prescribed, the City Council may cause the building to be repaired, razed or removed or the hazardous condition to be removed or corrected as set forth in the judgment, or acquire the building, if any, and real estate on which the building or hazardous condition is located by eminent domain.

(B) The cost of the repairs, razing, correction or removal may be a lien against the real estate on which the building is located or the hazardous condition exists, or recovered by obtaining a judgment against the owner of the real estate on which the building is located or the hazardous condition exists. A lien may be levied and collected only as a special assessment in the manner provided by Minn. Stat. §§ 429.061 to 429.081, as they may be amended from time to time, but the assessment is payable in a single installment. When the building is razed or removed by the city, the City Council may sell the salvage and valuable materials at public auction upon three days' posted notice.

(2001 Code, § 902.19)

§ 150.070 STATEMENT OF MONEYS RECEIVED.

(A) The city will keep an accurate account of the expenses incurred in carrying out the order and of all other expenses incurred in connection with its enforcement, including specifically, but not exclusively, filing fees, service fees, publication fees, attorney's fees, appraiser's fees, witness fees, including expert witness fees, and traveling expenses incurred by the city from the time the order was originally made, and must credit the amount, if any, received from the sale of the salvage, building or structure, and shall report its action under the order, with a statement of moneys received and expenses incurred to the court for approval and allowance.

(B) Thereupon the court shall examine, correct, if necessary, and allow the expense account, and, if the amount received from the sale of the salvage, building or structure, does not equal or exceed the amount of expenses as allowed, the court shall by its judgment certify the deficiency in the amount so allowed to the City Clerk for collection.

(C) The owner or other party in interest must pay the same, without penalty added. If the owner or other party in interest is in default of payment by October 1, the Clerk must certify the amount of the expense to the County Auditor for entry on the tax lists of the county as a special charge against the real estate on which the building or hazardous condition is or was situated, and the same is collected in the same manner as other taxes, and the amount so collected is paid into the City Treasury.

(D) If the amount received for the sale of the salvage or of the building or structure exceeds the expense incurred by the city as allowed by the court, and if there are no delinquent taxes, the court will direct the payment of the surplus to the owner or the payment of the same into court, as provided in this subchapter. If there are delinquent taxes against the property, the court will direct the payment of the surplus to the County Treasurer to be applied on such taxes.

(2001 Code, § 902.21)

§ 150.071 PAYMENT, TENDER, DEPOSIT IN COURT.

(A) The net proceeds of a sale pursuant to § 150.069, or § 150.072 are paid to persons designated in the judgment in the proportions as their interests appear.

(B) Acceptance of the payment is taken as a waiver of all objections to the payment and to the proceedings leading thereto on the part of the payee and of all persons for whom the payee is lawfully empowered to act.

(C) In case any party to whom a payment of damages is made is not a resident of the state, the place of residence is unknown, the party is an infant or other person under legal disability, refuses to accept payment, or if for any reason it is doubtful to whom any payment should be paid, the city may pay the same to the Clerk, to be paid out under the direction of the court and, unless an appeal be taken, the deposit with the Clerk is deemed a payment of the award.

(2001 Code, § 902.23)

§ 150.072 PERSONAL PROPERTY OR FIXTURES.

(A) If any building ordered razed, removed or made safe and sanitary by repairs contains personal property or fixtures which will unreasonably interfere with the razing, removal or repair of the building, or if the razing or removal of the building makes necessary the removal of the personal property or fixtures, the original order of the City Council may direct the removal of the personal property or fixtures within a reasonable time.

(B) If the property or fixtures are not removed by the time specified and the City Council subsequently desires to enforce a judgment under this subchapter, it may sell it at public auction pursuant to § 150.069, or if without appreciable value, the City Council may destroy it.

(2001 Code, § 902.25)

§ 150.073 SECURING VACANT BUILDINGS.

(A) *Order; notice.* If a building becomes vacant or unoccupied and is deemed hazardous due to the fact that the building is open to trespass and has not been secured, the City Council may order the building secured. Notice of the order must be served upon the owner of record of the premises or the owner's agent, the taxpayer identified in the property tax records for that parcel, the holder of the mortgage or sheriff's certificate, and any neighborhood association for the neighborhood in which the building is located that has requested notice by delivering or mailing a copy to the interested persons at the last known address. Service by mail is complete upon mailing.

(B) *Securing building by city; lien.* If the owner of the building fails to either comply or provide to the City Council a reasonable plan and schedule to comply with an order issued under division (A) above within six days after the order is served, the City Council may cause the building to be properly secured, and the cost of securing the building may be charged against the real estate pursuant to § 150.069.

(C) *Emergency securing.*

(1) Whenever the City Manager finds that an emergency exists that requires immediate action to protect the public health and safety, the City Manager may take any and all actions necessary to secure the building.

(2) These actions may include, but are not limited to: installing locks, repairing or boarding windows and doors, posting "no trespassing" signs, installing exterior lighting or motion-detection lights, fencing the property, installing alarm systems or other actions.

(3) The costs of securing the building may be recovered from the owner of the building or charged against the property.

(2001 Code, § 902.27)

MOVING BUILDINGS

§ 150.085 DEFINITION.

For purposes of this subchapter, **BUILDING** means any structure used or intended for supporting or sheltering any use or occupancy. The term includes, but is not limited to, farm buildings and dwellings.

(2001 Code, § 420.01)

§ 150.086 HOUSE MOVER'S LICENSE.

No person may move, remove, raze or hold up any building within the city without a license to do so from the state as provided by law.

§ 150.087 BUILDING MOVING PERMIT.

(A) *Permit required.* A licensed house mover may not move any building over, along or across any highway, street or alley in the city without first obtaining a building moving permit pursuant to §§ 32.15 through 32.20.

(B) *Application.* In addition to the requirements in §§ 32.15 through 32.20, the application must state the following information:

(1) A description of the building to be moved, construction material, dimensions, number of rooms and condition of exterior and interior, and photographs showing ground and street elevations;

(2) A legal description of the premises from where the building is to be moved;

(3) A legal description of the premises to where the building will be moved, if located in the city;

(4) The portion of the premises to be occupied by the building when moved, if located in the city;

(5) The highways, streets and alleys that the building will be moved along or across;

(6) The proposed moving date and hours; and

(7) Any additional information that the Building Official finds necessary to make a fair determination of whether a permit should be issued.

(C) *Filing date of application.* The application for a building moving permit must be made at least 30 days prior to the proposed moving date.

(D) *Certificate of ownership or entitlement.* The applicant must file with the application a written statement or bill of sale or other sufficient evidence that the applicant is entitled to move the building.

§ 150.088 DEPOSIT FOR EXPENSE.

(A) *Amount.* Upon receipt of an application for a building moving permit, the Building Department will obtain an estimate of the expenses that will be incurred in removing and replacing any electric wires, street lamps or pole lines belonging to the city or any other property of the city, that will be required to be removed or replaced because of the moving of the building through the city, together with the cost of materials necessary to be used in making the removals or replacements. Prior to issuance of the permit, the Building Official will require that the applicant deposit a sum of money equal to the amount of the estimated expenses.

(B) *Expenses; recovery.* After the building has been removed, the Building Official will furnish the Finance Director with a written statement of all expenses incurred in removing and replacing all property belonging to the city and of all material used in the making of the removal and replacement together with a statement of all damage caused to or inflicted upon property belonging to the city. If any wires, poles, lamps or other property are not located in conformity with this Code, the permittee will not be liable for the cost of removing them. The Finance Director will authorize the Building Official to return all deposits to the applicant after the deduction of a sum sufficient to pay for all of the costs and expenses and for damage done to property of the city by reason of the removal of the building. Permit fees deposited with the application will not be returned.

(C) *Expenses above deposit.* The permittee will be liable for any expenses and damages or costs in excess of deposited amounts or securities. The City Attorney may prosecute an action against the permittee in a court of competent jurisdiction for the recovery of the damages, costs or expenses.

(D) *Unsafe premises.* If the permittee does not comply with the requirements of this subchapter, the city will do the work necessary to leave the original premises in a safe and sanitary condition, and the cost will be charged against the house mover's deposit.

§ 150.089 DUTIES OF BUILDING OFFICIAL.

(A) *Standards.* The Building Official will refuse to issue a permit if it is determined:

- (1) That any application requirement or any fee or deposit requirement has not been paid;
- (2) That the building is too large to move without endangering persons or property in the city;
- (3) That the building is in such a state of deterioration or disrepair or is otherwise so structurally unsafe that it could not be moved without endangering persons or property in the city;
- (4) That the building is structurally unsafe or unfit for the purpose that it is being moved;
- (5) That the applicant's equipment is unsafe and that persons and property would be endangered by its use;
- (6) That zoning regulations or other portions of this Code would be violated by the building in its new location;
- (7) That for any reason persons or property in the city would be endangered by the moving of the building;
- (8) That the building to be moved is not worth at least 50% of the cost of a similar new building;
- (9) That the building in its new location would fail to comply in any respect with any provision of this Code or that proper assurance for future compliance has not been given;
- (10) That the new location is not sufficiently prepared for the building to be permanently placed, including, but not limited to, the lack of footings or foundation; and
- (11) That a permanent address has not been established for the new location.

(B) *Permit fees.* Upon the refusal of the Building Official to issue a permit, all deposits, bonds and insurance policies will be returned to the applicant. Application fees will not be returned.

(C) *Designate streets for removal.* The Building Official will obtain from the City Engineer a list of designated streets, railroad crossings and bridges on which the building may be moved. The list must be approved by the Police Chief and reproduced on the permit. In making their determinations, the Engineer and the Police Chief will assure maximum safety to persons and property in the city and minimize congestion and traffic hazards on public streets.

(2001 Code, § 420.09)

§ 150.090 CONDITIONS OF PERMIT.

(A) *Designated streets.* Permittees may move a building only over streets designated in the written permit.

(B) *Changes.* Permittees must notify the Building Official in writing of a desired change in moving date and hours as proposed in the application.

(C) *Damage.* Permittees must notify the Building Official of any and all damage done to property belonging to the city within 24 hours after the damage or injury has occurred.

(D) *Warning signals.* Permittees must display warning lights on every side of the building at night and warning flags during the day while the building is being moved or standing on a street, to warn the public of the obstruction, and must, where necessary, erect and maintain barricades across the streets to protect the public from damage or injury.

(E) *Time limit.* Permittees must remove the building from the city streets in the time specified in the permit, unless the city grants an extension.

(F) *Police protection.* Permittees must pay the expense of a traffic officer, if ordered by the Police Chief, to accompany the movement of the building to protect the public from injury.

(G) *Restoration of premises.* Permittees must remove all rubbish and materials and fill all excavations to existing grade at the original building site, when located in the city, so that the premises are left in a safe and sanitary condition.

(2001 Code, § 420.11)

§ 150.105 POLICY; RELATION TO ZONING.

(A) *Purpose.* The purpose of this subchapter is to regulate the construction and erection of signs in the city.

(B) *Zoning Code; comprehensive regulations.* The provisions of this subchapter will be applied to complement the provisions of §§ 153.430 through 153.438.

(C) *Definitions.* The terms used in this subchapter have the meanings given them by § 153.431.

(D) *Conflicting definitions.* When doubt exists as to the meaning of a term in this subchapter or the proper interpretation of the provisions of this subchapter in conjunction with the relevant provisions of the Zoning Code (Chapter 153), the question will be resolved by the Planning Commission acting as the Committee of Adjustments under § 31.02.

(2001 Code, § 415.01) (Ord. 08-12, passed - -)

§ 150.106 REQUIRED PERMITS.

No person shall erect, alter, reconstruct or move any sign within the city without first obtaining a permit issued by the Building Official pursuant to §§ 32.15 through 32.20.

(A) *Application for permit.* In addition to the information required in §§ 32.15 through 32.20, any application for a sign-related permit must contain the following information:

(1) Location of the building, structure or lot to which or upon which the sign is to be attached or erected;

(2) Position of the sign and sign structure in relation to nearby buildings or structures;

(3) Two blueprints or ink drawings of the plans and specifications and method of construction and attachment of the sign and any sign structure to the building or ground;

(4) One copy of stress sheets and calculations signed by a structural engineer showing that the sign structure is designed for dead load and wind pressure in any direction in the amount required by the Building Code;

(5) Name of the person erecting the sign structure;

(6) Whether an electrical permit is required for the sign; and

(7) Any other information the Building Official may require to ensure the sign fully complies with the requirements of this chapter. The Building Official may waive items in divisions (A)(3) and (A)(4) above.

(B) *Illuminated signs.*

(1) The application for a permit for the erection or alteration of a sign in which electrical wiring and connections are to be used must be submitted to the Electrical Inspector.

(2) The Electrical Inspector shall examine the plans and specifications regarding all wiring and connections to determine if the proposed sign complies with the State Building Code, and will approve the permit if the plans and specifications comply with the Building Code, or deny the application if the plans and specifications do not comply with the Building Code.

(3) This action of the Electrical Inspector must be taken prior to submission of the application to the Building Official for final approval or denial of the permit.

(2001 Code, § 415.05) (Ord. 11-14, passed - -)

§ 150.107 EXCEPTIONS.

No permit is required for the erection, alteration, reconstruction, maintenance or movement of the following signs (the signs must still comply with the remaining provisions of this chapter):

- (A) Building markers;
- (B) Noncommercial flags;
- (C) Official or public notices issued by a court or governmental agency;
- (D) Signs six square feet or less in gross area located on property used as a residential use and located in an R District;
- (E) Directional signs, defined as a sign which serves primarily to direct traffic to the location of a place, area or activity, such as "enter" and "exit" signs, provided the signs have a maximum height of no more than six feet, utilize a majority of the sign area for the directional message, and are no more than six square feet in size; and
- (F) Signs on bus shelters.

(2001 Code, § 415.07)

§ 150.108 UNSAFE SIGNS.

If the Building Official or Zoning Administrator finds that any sign is an unsafe sign, as defined in § 153.431, the sign shall be removed. If the owner fails to remove the sign, it shall be declared a public nuisance, and is subject to abatement and assessment as provided in Chapter 94.

(2001 Code, § 415.09)

§ 150.109 CONDITIONS OF PERMIT.

(A) *Maintenance of signs.* The owner of any sign must have the sign and all parts and supports of the sign properly maintained at all times.

(B) *Wind pressure and dead load.* All signs must be designed and constructed to meet the current Building Code with respect to wind pressure and dead loads.

(C) *Obstruction of doors, windows or fire escapes.* No sign shall be erected, altered, reconstructed, maintained or moved in such a manner as to prevent free ingress to or egress from any door, window or fire escape. No sign of any kind shall be attached to a standpipe or fire escape.

(D) *Traffic hazards.* No sign shall be erected at the intersection of any street or right-of-way or within 20 feet of an intersection that obstructs free and clear vision of any pedestrian or motorist; or at any location where, by reason of its position, shape or color, it may interfere with, obstruct the view of, mislead or confuse pedestrian or vehicular traffic.

(E) *Surface of signs.* All signs that are constructed adjacent to or within ten feet of a street, must have a smooth surface and no nails, tacks or wires are permitted to protrude from the sign, except electrical reflectors and devices that may extend over the top and in front of the sign structure.

(F) *Goose neck reflectors.* Goose neck reflectors and lights will be permitted on awning, canopy or monument signs provided that the reflectors are adjusted to concentrate the illumination upon the face of the sign to prevent glare upon the street or adjacent property.

(G) *Spotlights and floodlights.* No sign that is wholly or partially illuminated by floodlights or spotlights may extend over public property. Monument signs may be lighted by spotlights or floodlights directed at the sign face, but spotlights or floodlights directed away from the sign face are prohibited.

(H) *Obscene matter.* A person may not display any obscene material upon any sign or sign structure.

(2001 Code, § 415.11) (Ord. 11-14, passed - -)

§ 150.110 TEMPORARY SIGNS.

(A) *Temporary commercial speech signs.*

(1) Temporary commercial speech signs must be located on the permittee's property and must refer only to the business, industry or pursuit conducted on or within the premises on which the sign is erected or maintained or a non-commercial message.

(2) Every temporary commercial speech sign must be safely and securely anchored and supported.

(3) Temporary commercial speech sign permits may be issued up to the maximum length of time as follows.

(a) For an existing business, a maximum of two temporary commercial speech sign permits may be issued to each business establishment each calendar year for up to 30 days each.

(b) For a new business or for the re-opening of an existing business, a temporary commercial speech sign permit may be issued for up to 45 days. Thereafter, a second permit may be issued for up to an additional 30 days.

(c) For purposes of this section, the following definitions shall apply:

EXISTING BUSINESS. A business that is not a new business.

NEW BUSINESS. A business that has been in existence at the location requested for 12 months or less.

RE-OPENING OF AN EXISTING BUSINESS. A business that has been under new ownership for 12 months or less.

(d) The maximum area of a temporary commercial speech sign shall be 48 square feet and the maximum height of a temporary commercial speech sign shall be eight feet.

(e) No more than two temporary commercial speech signs may be located on any one lot or premises for the same topic, location, event or matter.

(f) A temporary commercial speech sign must be removed within 24 hours after the expiration of the permit.

(B) *Temporary real estate and leasing signs in business and industrial districts.*

(1) *New construction.* Temporary real estate and leasing signs advertising new construction are permitted subject to the following requirements:

(a) One sign is allowed per street frontage;

(b) Sign(s) may not be erected until construction begins;

(c) Sign(s) must be removed if property is sold or leased, or removed within 12 months after commencement of construction, whichever occurs first;

(d) The maximum area shall be 32 square feet;

(e) The maximum height shall be eight feet;

(f) Sign(s) shall be freestanding or wall mounted;

(g) All free-standing signs shall be setback a minimum of five feet from all property lines and properly secured into the ground as determined by the Zoning Administrator.

(2) *Existing buildings.* Temporary real estate and leasing signs for existing buildings are permitted by means of one of the following options:

(a) *Freestanding incorporated sign.*

1. The principal freestanding sign shall be architecturally modified to accommodate one real estate or leasing sign within the perimeter of the existing conforming freestanding sign;

2. The maximum area of the real estate or leasing sign shall be determined by the gross square footage of the building(s) as follows:

<i>Building(s) Gross Square Footage</i>	<i>Sign Area</i>

Less than 20,000	15 square feet
20,000 - 100,000	20 square feet
Greater than 100,000	25 square feet

(b) *Freestanding sign.*

1. One real estate or leasing sign is allowed per street frontage;
2. The maximum area of the real estate or leasing sign shall be determined by the gross square footage of the building(s) as follows:

<i>Building(s) Gross Square Footage</i>	<i>Sign Area</i>
Less than 20,000	12 square feet
20,000 - 100,000	16 square feet
Greater than 100,000	18 square feet

3. The maximum height shall be eight feet and maximum width shall be six feet, subject to the size requirements outlined above;
4. The sign(s) shall be secured into the ground as determined by the Zoning Administrator; and
5. The minimum setback shall be five feet from all property lines.

(c) *Wall mounted sign.*

1. One or two story buildings:
 - a. One wall sign is allowed per property;
 - b. The maximum size of the real estate or leasing sign shall be determined by the gross square footage of the building(s) as follows:

<i>Building(s) Gross Square Footage</i>	<i>Sign Area</i>
Less than 20,000	12 square feet
20,000 - 100,000	16 square feet
Greater than 100,000	18 square feet

- c. The sign shall be directly anchored to the building wall.
 2. Three or more story buildings:
 - a. The maximum area shall be 30 square feet;
 - b. The sign shall be directly anchored to the building wall; and
 - c. The sign shall be displayed on the building's third story or above.
- (3) Real estate or leasing signs up to 32 square feet in size will be permitted until the property is sold or leased instead of Option 2

or Option 3 above if the standards in either divisions (B)(3)(a) or (B)(3)(b) below are met:

- (a) Business or industrial property directly abutting Highway 52; or
- (b) The principal structure is greater than four stories.

(C) *Optional signs.*

(1) As used in this section, **OPTIONAL SIGNS** are signs petitioned by area residents for installation along streets or alleys and include all notice and warning signs. Optional signs do not include signs deemed necessary or required by the city for traffic regulations, control and public notice.

(2) All optional signs requested by area residents, but not deemed necessary or required by the Public Works Director, will be installed upon order of the City Council and upon payment in an amount established by City Council resolution.

(2001 Code § 415.13) (Ord. 14-01A, passed 1-13-2014)

TEMPORARY FAMILY HEALTH CARE DWELLINGS

§ 150.125 OPT-OUT FOR TEMPORARY FAMILY HEALTHCARE DWELLING REGULATIONS.

Pursuant to authority granted by Minn. Stat. § 462.3593, Subd. 9, the City of West St. Paul opts out of the requirements of Minn. Stat. § 462.3593, which defines and regulates temporary family health care dwellings.

(Ord. 16-10, passed 8-22-2016)

CHAPTER 151: FLOODPLAIN MANAGEMENT

Section

- 151.01 Definitions
- 151.02 Permit requirements
- 151.03 Permit application
- 151.04 Duties of the Building Official
- 151.05 Review of permit application
- 151.06 Review of subdivision proposals
- 151.07 Water supply system
- 151.08 Sanitary sewage and waste disposal system
- 151.09 Abrogation and greater restriction

§ 151.01 DEFINITIONS.

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

DEVELOPMENT. Any human-made change to real property, including but not limited to construction or reconstruction of buildings, installing manufactured homes or travel trailers, installing utilities, construction of roads or bridges, erection of levees, walls or fences, drilling, mining, filling, dredging and storage of materials.

FLOOD. A general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or

tidal waves, or the unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN or **FLOOD-PRONE AREA**. Any land area susceptible to being inundated by water from any source (see **FLOOD**).

FLOODPROOFING. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real property or improved real property, water and sanitary facilities, structures and their contents.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designated for use with or without a permanent foundation when attached to the required utilities.

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of this chapter and includes any subsequent improvements to such structures.

PERSON. Includes any individuals, corporation, partnership, association or any other entity, including state and local governments and agencies.

SPECIAL FLOOD HAZARD AREA. The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year.

STRUCTURE. For floodplain management purposes, a walled and roofed building, including gas or liquid storage tanks, that is principally above ground. The term includes recreational vehicles and travel trailers on site for more than 180 days.

SUBSTANTIAL IMPROVEMENT.

(1) Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either: before the improvement or repair is started; or if the structure has been damaged, and is being restored, before the damage occurred.

(2) For the purposes of this definition, **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure regardless of the actual work performed.

(3) The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to assure safe living conditions; or any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an historic structure.

(2001 Code, § 450.01) (Ord. 10-10, passed - -)

§ 151.02 PERMIT REQUIREMENTS.

(A) No person shall erect, construct, enlarge, alter, repair, improve, move or demolish any building or structure without first obtaining a separate permit for each building or structure from the Building Official, as required by the Building Code or the city code.

(B) No human-made change to improved or unimproved real property, fences, mining, dredging, filling, grading, paving, excavation or drilling operations, shall be commenced until a separate permit has been obtained from the Building Official for each change.

(C) No manufactured home shall be placed on improved or unimproved real property without first obtaining a separate permit for each mobile home from the Building Official.

(2001 Code, § 450.03) (Ord. 10-10, passed - -)

§ 151.03 PERMIT APPLICATION.

To obtain a permit required in § 151.02, the applicant shall first file a permit application pursuant to §§ 32.15 through 32.20.

(2001 Code, § 450.05) (Ord. 10-10, passed - -)

§ 151.04 DUTIES OF THE BUILDING OFFICIAL.

(A) The Building Official is the person responsible for receiving applications and examining the plans and specifications for the proposed construction or development.

(B) After reviewing the application, the Building Official may require any additional measures which are necessary to meet the minimum requirements of this subchapter. All persons shall be required to comply with any additional measures imposed by the Building Official.

(C) (1) The Building Official shall review proposed new developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

(2) Failure to receive all necessary permits from other governmental agencies shall result in denial of the permit.

(2001 Code, § 450.07) (Ord. 10-10, passed - -)

§ 151.05 REVIEW OF PERMIT APPLICATION.

(A) The Building Official shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding.

(B) If a proposed building site is in a flood-prone area, the Building Official shall require that all new construction and substantial improvements (including the placement of manufactured homes) are:

(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.

(2001 Code, § 450.09) (Ord. 10-10, passed - -)

§ 151.06 REVIEW OF SUBDIVISION PROPOSALS.

(A) The Building Official shall review subdivision proposals and other proposed new developments to determine whether such proposals will be reasonably safe from flooding.

(B) If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposal shall be required to assure that:

(1) All the 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.

(2001 Code, § 450.11) (Ord. 10-10, passed - -)

§ 151.07 WATER SUPPLY SYSTEM.

Within flood-prone areas, the Building Official shall require new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems.

(2001 Code, § 450.13) (Ord. 10-10, passed - -)

§ 151.08 SANITARY SEWAGE AND WASTE DISPOSAL SYSTEM.

- Within flood-prone areas, the Building Official shall require:
- (A) New and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
 - (B) On-site waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.
- (2001 Code, § 450.15) (Ord. 10-10, passed - -)

§ 151.09 ABROGATION AND GREATER RESTRICTION.

- (A) This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restriction.
 - (B) Where this chapter and other ordinances, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (2001 Code, § 450.19) (Ord. 10-10, passed - -)

CHAPTER 152: PARKLAND DEDICATION

Section

- 152.01 Purpose and intent
- 152.02 Definitions
- 152.03 Dedication required
- 152.04 Parks and Recreation Committee recommendation
- 152.05 Land dedication
- 152.06 Park dedication fee
- 152.07 Combination of park dedication fee and land dedication

§ 152.01 PURPOSE AND INTENT.

- (A) Minn. Stat. § 462.358(2)(b), as it may be amended from time to time, provides that the city's subdivision regulations may require that a reasonable portion of any proposed subdivision be dedicated to the public or preserved for conservation purposes or for public use and that the city may alternatively accept an equivalent cash contribution.
- (B) The City Council recognizes it is essential to the health, safety and welfare of the residents of the city that the character and quality of the environment be considered to be of major importance in the planning and development of the city.
- (C) In this regard, the manner in which land is developed or redeveloped and used is a high priority.
- (D) The preservation of land for park, playground and public open space purposes as it relates to the use, development and redevelopment of land for residential, commercial and industrial purposes is essential to maintaining a healthful and desirable environment for all citizens of the city.
- (E) The City Council wishes to provide these amenities for citizens today, and be mindful of future citizens.
- (F) The City Council finds that development and redevelopment of land for residential, commercial and industrial purposes creates a need for park and recreational land and facilities within the city.
- (G) It is the intent and purpose of this chapter to provide for that need.

(2001 Code, § 1022.01)

§ 152.02 DEFINITIONS.

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

DEVELOPER. The person who applies for subdivision approval, who may be the land owner or his or her representative.

DEVELOPMENT. New construction on a vacant lot.

PARK DEDICATION FEE. A cash contribution in lieu of a land dedication.

REDEVELOPMENT. Reconstruction, alteration or remodeling of a building on land from which the city has not previously received parkland dedication or reconstruction, alteration or remodeling of a building on land for which the platting application results in a change in the number of lots or an increase in density.

(2001 Code, § 1022.03)

§ 152.03 DEDICATION REQUIRED.

(A) *General rule.* For all platting applications that involve development or redevelopment, developers must dedicate land for parks, playground, public open spaces and trails, and/or pay a park dedication fee.

(1) If the number of lots is decreased, then the land dedication or park dedication fee applies to each new lot on which development or redevelopment will occur.

(2) If the number of lots is increased, then the land dedication or park dedication fee applies to each lot or lots on which the development or redevelopment will occur.

(3) No land dedication or park dedication fee shall be applied to a lot on which no development or redevelopment will occur.

(B) *Exception.* Previously platted land from which a park dedication has been received that is being re-platted with the same number of lots is exempt from park dedication requirements.

(2001 Code, § 1022.05)

§ 152.04 PARKS AND RECREATION COMMITTEE RECOMMENDATION.

Prior to final plat approval, the Parks and Recreation Committee must recommend to the City Council the land and/or park dedication fee for the proposed development or redevelopment.

(2001 Code, § 1022.07)

§ 152.05 LAND DEDICATION.

(A) *Formula.*

(1) For development or redevelopments when a land dedication is made, the following formula will be used as a guideline to determine the appropriate land dedication requirements.

(2) The city may deviate from the following percentages based on unique circumstances associated with the site:

Type of Use	Land Dedication Percentage

Commercial	8%
Industrial	8%
PUD	Percentage based on actual usage
Residential	8%

(B) *Dedication of parkland outside of development.* Developers may, with approval of the City Council, dedicate the required parkland in property outside the development or redevelopment and located within areas designated in the city's Parks Master Plan.

(C) *Condition of parkland.* The developer must rough grade the dedicated parkland to city specifications.

(D) *Change of parkland requirements.* The City Council, upon consideration of a particular type of development or redevelopment, may require larger or smaller parcels of land to be conveyed to the city if the City Council determines that the present or future residents would require larger or smaller land for park and playground purposes.

(E) *Suitability of parkland.* Land must be reasonably suitable for its intended use and must be at a location convenient to the people to be served and consistent with the park and recreational purposes. Land with dead trees, trash, junk, pollutants and unwanted structures is not acceptable unless the developer first removes the unacceptable material. To be eligible for park dedication, the land that is dedicated must be located outside of the drainage ways, floodplains or ponding areas after the site has been developed or redeveloped.

(F) *Partial credit for private parkland.* Where private open space for park and recreation purposes is provided in a proposed development or redevelopment, such areas may be used for partial credit, at the discretion of the City Council, against the land or park dedication fee requirement for park and recreational purposes, provided the City Council finds it is in the public interest to do so.

(2001 Code, § 1022.09)

§ 152.06 PARK DEDICATION FEE.

(A) *Alternative.* As an alternative to the land dedication, the city may require a park dedication fee. The developer shall pay the park dedication fee before a building permit will be issued.

(B) *Use of park dedication fees.* The city shall use park dedication fees only for acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands or open space based upon the approved park systems plan. Park dedication fees shall not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands or open space. Park dedication fees will be separately accounted for in the city's Park Capital Fund and only used for the purposes enumerated.

(C) *Calculation of park dedication fee.* The park dedication fee shall be based on a reasonable estimate of the fair market value of the land that is being developed or redeveloped as determined by the County Assessor or other relevant factors, and shall include the value added by existing utilities, streets and other public improvements serving the property, but shall not include the value added of all other existing improvements on the land. The park dedication fee shall not exceed the amount stated in the fee schedule.

(2001 Code, § 1022.11)

§ 152.07 COMBINATION OF PARK DEDICATION FEE AND LAND DEDICATION.

The city and developer may negotiate a combination of a park dedication fee, land dedication and/or development of the land for park purposes to fulfill the park dedication requirements of this chapter.

(2001 Code, § 1022.13)

General Provisions

- 153.001 Title
- 153.002 Intent and purpose
- 153.003 Rules of construction; language
- 153.004 Definitions
- 153.005 Separability
- 153.006 Nonconforming uses and structures
- 153.007 Lot provisions
- 153.008 Required yards and open space
- 153.009 Height limitations
- 153.010 Essential services
- 153.011 Zoning districts and map

Administration and Enforcement

- 153.025 Enforcing officer
- 153.026 Appeals
- 153.027 Variances
- 153.028 Conditional uses
- 153.029 Interim uses
- 153.030 Amendments to a zoning district
- 153.031 Site plan approval procedure and design requirements in residential districts
- 153.032 Site plan approval procedure and design requests in commercial and industrial districts
- 153.033 Filing with County Recorder
- 153.034 Fees

R-1A One-Family Residential District

- 153.050 Permitted uses
- 153.051 Conditional uses
- 153.052 Permitted accessory uses
- 153.053 Lot area, heights, lot width, yard and other requirements

R-1B One-Family Residential District

- 153.065 Permitted uses
- 153.066 Conditional uses
- 153.067 Permitted accessory uses
- 153.068 Lot area, height, lot width, yard and other requirements

R-1C One-Family Residential District

- 153.080 Permitted uses
- 153.081 Conditional uses
- 153.082 Permitted accessory uses
- 153.083 Lot area, height, lot width, yard and other requirements

R-2 Two-Family Residential District

- 153.095 Permitted uses
- 153.096 Conditional uses
- 153.097 Permitted accessory uses
- 153.098 Lot area, height, lot width, yard and other requirements

R-3 Townhouse 3-8 Unit Residential District

- 153.110 Permitted uses
- 153.111 Conditional uses
- 153.112 Permitted accessory uses
- 153.113 Lot area, height, lot width and yard requirements
- 153.114 Prohibited uses

R-4 Multiple-Family 3-16 Unit Residential District

- 153.125 Permitted uses
- 153.126 Conditional uses
- 153.127 Permitted accessory uses
- 153.128 Lot area, height, lot width and yard requirements
- 153.129 Prohibited uses

B-1 Limited Business District

- 153.140 Permitted uses
- 153.141 Conditional uses
- 153.142 Interim uses
- 153.143 Permitted accessory uses
- 153.144 Lot area, height, lot width and yard requirements
- 153.145 Prohibited uses

B-2 Neighborhood Business District

- 153.155 Permitted uses
- 153.156 Conditional uses
- 153.157 Interim uses
- 153.158 Permitted accessory uses
- 153.159 Screening requirements
- 153.160 Prohibited uses

B-3 General Business District

- 153.170 Permitted uses
- 153.171 Conditional uses
- 153.172 Interim uses
- 153.173 Permitted accessory uses
- 153.174 Screening requirements
- 153.175 Prohibited uses

B-4 Shopping Center District

- 153.185 Purpose
- 153.186 Application
- 153.187 Permitted uses
- 153.188 Conditional uses
- 153.189 Interim uses
- 153.190 Permitted accessory uses
- 153.191 Area and design requirements
- 153.192 Prohibited uses

B-5 Gateway North Mixed Use District

- 153.205 Permitted uses
- 153.206 Conditional uses
- 153.207 Interim uses
- 153.208 Permitted accessory uses
- 153.209 Lot area, height, lot widths and yard requirements
- 153.210 Prohibited uses

B-6 Town Center Mixed Use District

- 153.220 Permitted uses
- 153.221 Conditional uses
- 153.222 Interim uses
- 153.223 Permitted accessory uses
- 153.224 Lot area, height, lot widths and yard requirements
- 153.225 Prohibited uses

I-1 Light Industrial District

- 153.235 Permitted uses
- 153.236 Conditional uses
- 153.237 Permitted accessory uses
- 153.238 Lot area, height, lot widths and yard requirements

153.239 Prohibited uses

I-2 General Industrial District

153.250 Permitted uses

153.251 Conditional uses

153.252 Permitted accessory uses

153.253 Lot area, height, lot widths and yard requirements

153.254 Prohibited uses

C Conservancy District

153.265 Permitted uses

153.266 Conditional uses

153.267 Permitted accessory uses

153.268 Lot area, height, lot width and yard requirements

PD Planned Development Districts

153.280 Intent

153.281 Exhibits

153.282 Revisions

153.283 Lapse of approval

PRD Planned Residential Development District

153.295 Intent

153.296 Permitted uses

153.297 Density

PMD Planned Multi-Use Development District

153.310 Intent

153.311 Permitted uses

Performance Standards

153.325 Noise pollution

153.326 Air pollution emissions

153.327 Toxic or noxious matter

153.328 Vibration

153.329 Glare or heat

153.330 Explosives

153.331 Waste material

153.332 Storage tanks

Off-Street Parking and Loading Spaces

153.345 Purpose; application

- 153.346 General provisions
- 153.347 Design and maintenance of off-street parking areas
- 153.348 Number of required off-street parking spaces
- 153.349 Application of off-street loading and unloading regulations
- 153.350 Number of required loading berths
- 153.351 Underground parking in R-4 multiple-family districts

Land Excavation/Filling/Grading

- 153.365 Land excavation/filling/grading

Special Provisions

- 153.380 Accessory buildings or structures
- 153.381 Fences
- 153.382 Auto-related uses

Telecommunications Services

- 153.395 Radio and television antennas
- 153.396 Satellite dish antenna
- 153.397 Antenna towers

Shoreland Management

- 153.410 Policy
- 153.411 Designation of types of land use
- 153.412 Zoning provisions
- 153.413 Shoreland alterations
- 153.414 Utilities
- 153.415 Subdivisions
- 153.416 Notification procedures

Signs; Regulations

- 153.430 Purpose
- 153.431 Definitions
- 153.432 Permits
- 153.433 Exceptions
- 153.434 Prohibited signs
- 153.435 General provisions
- 153.436 Permitted signs by district
- 153.437 Message substitution
- 153.438 Noncommercial speech

Sexually-Oriented Establishments

- 153.455 Purpose
- 153.456 General provisions
- 153.457 Definitions
- 153.458 Regulations
- 153.459 Exceptions

Stormwater Management

- 153.470 Policy
- 153.471 Definitions
- 153.472 Stormwater Pollution Prevention Plan (SWPPP)
- 153.473 Stormwater Pollution Control Plan
- 153.474 Review
- 153.475 Modification of plan
- 153.476 Financial securities
- 153.477 Notification of failure of the SWPPP or Stormwater Pollution Control Plan
- 153.478 Exceptions
- 153.479 Right of entry and inspection
- 153.480 Abrogation and greater restrictions

GENERAL PROVISIONS

§ 153.001 TITLE.

This chapter shall be known, cited and referred to as the "West St. Paul Zoning Ordinance," except as referred to herein, where it shall be known as "this chapter."

(Ord. passed 10-11-1963)

§ 153.002 INTENT AND PURPOSE.

This chapter is adopted for the purpose of:

- (A) Protecting the public health, safety, comfort, convenience and general welfare;
- (B) Promoting orderly development and regulating the use of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation and conservation of shorelands;
- (C) Providing adequate light, air and convenience of access to property;
- (D) Allowing access to direct sunlight for solar energy systems;
- (E) Regulating the density and distribution of population;
- (F) Preventing overcrowding of land and undue concentration of structures;

- (G) Limiting congestion in the public right-of-way;
- (H) Dividing the city into zones and districts, restricting and regulating therein the location, construction, reconstruction, alteration and use of structures and land;
- (I) Maintaining the compatibility of different land uses and the most appropriate use of land throughout the city;
- (J) Requiring that no structure be erected, converted, enlarged, reconstructed or altered and no structure or land be used for any purpose or in any manner which is not in conformity with the provisions of this chapter;
- (K) Defining the powers and duties of the administrative officers and bodies, as provided hereinafter;
- (L) Providing for the administration of this chapter and amendments thereto;
- (M) Providing that where the conditions imposed by any provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations of which are more restrictive, or which impose higher standards or requirements shall prevail; and
- (N) Prescribing penalties for the violation of the provisions of this chapter or any amendment thereto.

(Ord. passed 10-11-1963)

§ 153.003 RULES OF CONSTRUCTION; LANGUAGE.

The language set forth in the text of this chapter shall be interpreted in accordance with the following rules of construction.

- (A) Unless the context clearly requires otherwise, the use of either singular or plural shall include the other.
- (B) Unless the context clearly requires otherwise, the use of past, present or future tense shall include the other tenses.
- (C) Unless the context clearly requires otherwise, the use of a gender-specific pronoun shall include the other genders.
- (D) Unless otherwise defined in this chapter, meanings of words and phrases shall be used in their plain, ordinary meaning.
- (E) Unless otherwise clearly stated, where this chapter refers to a section number, it is deemed to be a section within this chapter.
- (F) As they appear in this chapter, the words "shall" and "must" are mandatory and the word "may" is permissive.
- (G) All measured distances expressed in feet shall be to the nearest tenth of a foot.

(Ord. passed 10-11-1963)

§ 153.004 DEFINITIONS.

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

ACCESSORY BUILDING, STRUCTURE OR USE. A building, structure or use subordinate to and serving the principal building, structure or use on the same lot and customarily incidental thereto.

ADULT. A person 18 years of age or older.

ADULT DAY CARE FACILITY. A program operating less than 24 hours per day that provides functionally impaired adults with an individualized and coordinated set of services including health services, social services and nutritional services that are directed at maintaining or improving the participants' capabilities for self-care.

AIRPORT. Any land or structure which is used or intended for use, for the landing or take-off of aircraft, and any appurtenant land or structure used or intended for use for port buildings or other port structures or right-of-way.

ALLEY. A public right-of-way which affords a secondary means of access to abutting property.

ALTERNATIVE FINANCIAL ESTABLISHMENT. A person, business or organization engaged in the service of check-cashing,

money transmitting, making loans to be repaid in one lump sum or in installments over a set period of time, either collateralized or not, for which there is a fee or service charge, or interest received, including, but not limited to, loans, collateralized with the promise to relinquish possession of any personal property upon default. **ALTERNATIVE FINANCIAL ESTABLISHMENT** includes, but is not limited to consumer small loan lenders, currency exchanges, industrial loan and thrifts, money transmitting businesses or services, electronic fund transfer services and regulated loan companies, as defined by the State Department of Commerce.

ANIMALS, DOMESTIC PETS. Dogs, cats, birds and similar animals commonly kept in a residence.

ANTENNA. Any equipment or device used for the purpose of collection or transmitting electromagnetic waves which is external to or attached to the exterior of any structure, including, but not limited to, directional antennas such as panels, microwave dishes, satellite dish antennas, short wave radio antennas, television antennas and personal communication antennas. See §§ 153.395 through 153.397.

APARTMENT. A room or suite of rooms with cooking facilities designed to be occupied as a dwelling unit.

APARTMENT BUILDING. See **DWELLING, MULTIPLE-FAMILY.**

ARTERIAL STREET. See **STREET, ARTERIAL.**

ATTACHED DWELLING. See **DWELLING, ATTACHED.**

AUTO ACCESSORY STORE. A retail place of business engaged primarily in the sale of auto parts and accessories which does not include diagnostic, repair, replacement or other activities directly involved with motor vehicles.

BASEMENT. Any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a **BASEMENT** unless the floor level qualifies as a first story as defined herein.

BED AND BREAKFAST RESIDENCE. A dwelling in which four or fewer guest rooms are rented within the principal structure on a nightly basis for less than one week and where at least one meal per day is provided in connection with the sleeping accommodations. The operator of the residence lives on the premises or in an adjacent premises.

BLOCK. A tract of land bounded by streets, or a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines, waterways or boundary lines of the corporate limits of the city.

BODY ART or **BODY ART PROCEDURES.** Physical body adornment using, but not limited to, tattooing and body piercing. **BODY ART** does not include practices and procedures that are performed by a licensed medical or dental professional if the procedure is within the professional's scope of practice.

BODY ART ESTABLISHMENT. Any structure or venue, whether permanent, temporary or mobile, where body art is performed. Mobile establishments include vehicle-mounted units, either motorized or trailered, and readily moveable without disassembling and where body art procedures are regularly performed in more than one geographic location.

BODY PIERCING. The penetration or puncturing of the skin by any method for the purpose of inserting jewelry or other objects in or through the body. **BODY PIERCING** also includes branding, scarification, suspension, subdermal implantation, microdermal and tongue bifurcation. **BODY PIERCING** does not include the piercing of the outer perimeter or the lobe of the ear using a pre-sterilized single-use stud-and-clasp ear-piercing system.

BUILDING. Any structure used or intended for supporting or sheltering any use or occupancy.

BUILDING HEIGHT. The vertical distance to the highest point of the roof for flat roofs; to the deck line for mansard roofs; and to the average height between the highest roof ridge and its associated eaves for gable, hip and gambrel roofs, as measured from the finished grade level of the front elevation of the structure.

BUILDING OFFICIAL. The officer or other authority designated by the City Manager and certified by the state, charged with the administration and enforcement of the Uniform Building Code and State Building Code.

BUILDING, PRINCIPAL. A non-accessory building in which the primary use of the lot on which it is located is conducted.

CARPORT. An open-sided roofed automobile shelter usually formed by extension of the roof from the side of a building.

CAR WASH. An establishment engaged primarily in the commercial washing of automobiles. It shall not include occasional private fund-raising car washes conducted by fraternal, charitable or non-profit organizations. See § 153.382(D).

CERTIFICATE OF OCCUPANCY. A certificate issued by the Building Official or duly authorized representative permitting a

building or structure to be used or occupied.

CHILD DAY CARE FACILITY. The care of a child in a residence or facility licensed for such care, outside the child's own home for gain or otherwise, for less than 24 hours per day.

CHURCH. A building, together with its accessory buildings and uses, in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship.

CITY. The City of West St. Paul, County of Dakota, State of Minnesota.

CITY COUNCIL. The governing body of the City of West St. Paul.

CLEAR-CUTTING. The removal of an entire stand of trees.

CLUB or LODGE. An association of persons who are members paying dues and whose use of the premises are restricted to such members and their guests.

COLLECTOR STREETS. See **STREET, COLLECTOR.**

COLUMBARIA. A place such as a vault for the respectful and usually public storage of cremated human remains within cinerary urns. **COLUMBARIA** are accessory to places of assembly for worship.

COMPREHENSIVE MUNICIPAL PLAN. The policies, statements and goals for private and public land and water use, transportation and city facilities, which is documented in texts, maps and this chapter. Together, these documents constitute the guides for the future development of the city. This shall include the West St. Paul Comprehensive Plan, as adopted by the city, and all subsequent amendments and additions.

CONDITIONAL USE. See **USE, CONDITIONAL.**

CONDOMINIUM. A form of individual ownership within a building which entails joint ownership and responsibility for maintenance and repairs of the land and other common property of the building.

COOPERATIVE. A multi-unit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the enterprise.

CORNER LOT. See **LOT, CORNER.**

CURRENCY EXCHANGE. Any person, 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 person who provides these services incidental to the person's primary business if the charge of cashing a check or draft does not exceed \$1 or 1% of the value of the check or draft, whichever is greater.

DETACHED DWELLING. See **DWELLING, DETACHED.**

DISCOUNT STORE. A retail store that offers all or nearly all of its merchandise at a discount from the manufacturer's suggested retail price or at less than full-value retail price.

DOG TRAINING FACILITY. An indoor or outdoor facility utilized for the organized training of domestic dogs.

DRIVE-IN. A business offering food or drinks in containers to be served and/or consumed in automobiles for which parking facilities are furnished on the site. The term does not include establishments offering food or drinks to be taken out, but packaged in a container designed primarily to be consumed off the site.

DUPLEX. See **DWELLING, TWO-FAMILY.**

DWELLING. A building or one or more portions thereof occupied or intended to be occupied exclusively for residence purposes, but not including rooms in motels, hotels, nursing homes, boarding houses, rooming houses, bed and breakfast residences, nor trailers, tents, cabins or trailer coaches.

DWELLING, ATTACHED. A dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

DWELLING, DETACHED. A dwelling which is entirely surrounded by open space on the same lot.

DWELLING, MULTIPLE FAMILY (APARTMENT BUILDING). A building of two or more stories containing three or more

dwelling units, but not including a motel or hotel.

DWELLING, ONE FAMILY. A residential structure containing one dwelling unit only.

DWELLING, TWO-FAMILY (DUPLEX, TWIN HOME). A residential structure containing two dwelling units only.

DWELLING UNIT. A building or portion thereof which contains living facilities including provisions for sleeping, eating, cooking and sanitation for not more than one family.

EARLY CHILDHOOD LEARNING CENTER. A public facility sponsored by a school district in which educational programs are provided to parents and children from birth through elementary school.

EARTH SHELTERED CONSTRUCTION. A building constructed so that more than 50% of the exterior surface area of the building, excluding garages or other accessory buildings, is covered with earth. Partially completed buildings shall not be considered **EARTH SHELTERED**.

EFFICIENCY UNIT. A dwelling unit with one primary room which serves as a living room, dining room and bedroom.

ELDERLY COMMUNITY EDUCATION CENTER. A facility operated by a non-profit organization or government agency primarily devoted to community educational, recreational and cultural facilities, displays, meeting rooms, social service facilities and public health facilities, or any combination thereof, for persons over the age of 55. The services shall be provided for less than 24 hours per day.

ESSENTIAL SERVICES. Underground or overhead gas, electrical, steam or water transmission or distribution system, collection, communication, supply or disposal systems including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants or other similar equipment and accessories in conjunction therewith, but not including buildings. See § 153.010. Telecommunications services and personal wireless services are not **ESSENTIAL SERVICES** as defined in this section.

FACILITY. All or any portion of a building, structure or area, including the site on which the building, structure or area is located, wherein specific services are provided or activities are performed.

FAMILY. An individual or two or more persons legally related by blood, marriage, foster care or adoption, or a group of not more than three persons not related by blood or marriage living together in a dwelling unit.

FENCE. Any structure located along the boundary or within the required lot area intended for protection, enclosure or privacy, which is constructed of wood, iron or other material and including backstops, but excluding parts of a building. See § 153.381.

FINAL PLAT. A drawing or map of an approved subdivision which meets all the requirements of the city, county and state.

FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building or buildings measured from the interior faces of exterior walls from the centerline of party walls separating two buildings. In particular, **FLOOR AREA** shall include:

- (1) Basement space if at least one-half of the "basement story" is above the established curb level, or where the curb level has not been established, above the average of the finished grade;
- (2) Elevator shafts and stairwells at each level;
- (3) Floor space used for mechanical equipment where the structural headroom exceeds seven and one-half feet, except equipment open or enclosed located on the roof, i.e., bulk needs, water tanks and cooling towers;
- (4) Attic floor space where the structural headroom exceeds seven and one-half feet;
- (5) Interior balconies and mezzanines; and
- (6) Enclosed porches, but not terraces and breezeways.

FLOOR AREA RATIO (FAR). The numerical value obtained by dividing the gross floor area of a building by the net area of the lot or parcel of land on which such building is located.

FLOOR PLAN, GENERAL. A graphic representation of the anticipated utilization of the floor area within a building or structure but not necessarily as detailed as construction plans.

FRONT LOT LINE. See **LOT LINE, FRONT**.

FRONT YARD. See **YARD, FRONT.**

FUEL STATION. See **MOTOR FUEL STATION.**

GARAGE, PRIVATE. A detached accessory building or portion of the principal building, including a carport, which is used primarily for storing passenger vehicles or trucks of a rated capacity not in excess of one and one-half tons.

GARAGE, PUBLIC. A building, or portion thereof, except defined as a private garage, used for the storage or repair of motor vehicles.

GAS STATION. See **MOTOR FUEL STATION.**

GROUP FAMILY DAY CARE. A day care for no more than 14 children at one time. The total number of children includes all children of any care giver when the children are present in the residence.

HEALTH-RELATED SERVICES. Aid that provides the arrangement of assistance with walking, grooming, dressing, eating, bathing, toileting, storing medications, providing reminders to take medications, administering medications and similar services.

HOME OCCUPATION. Any gainful occupation or profession engaged in by the occupant of a dwelling. See § 153.052(C).

HOSPITAL. Any institution, place, building or agency, in which any accommodation is maintained, furnished or offered for five or more persons for: the hospitalization of the sick or injured; the provision of care in a swing bed authorized under Minn. Stat. § 144.562, as it may be amended from time to time: elective outpatient surgery for pre-examined, pre-diagnosed low risk patients; emergency medical services offered 24 hours per day, seven days a week, in an ambulatory or outpatient setting in a facility not a part of a licensed hospital; or the institutional care of human beings.

HOTEL. A building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

INCOMPATIBLE USE. See **USE, INCOMPATIBLE.**

INDUSTRY. An enterprise which involves the production, processing or storage of materials, goods or products.

INTERIOR LOT. See **LOT, INTERIOR.**

JUNK YARD. An area where used, discarded, salvaged materials or waste are bought, sold, exchanged, stored, baled, clean, packed, disassembled or handled, including, but not limited to, scrap iron, and other metals, paper rags, rubber products, bottles and lumber. Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included.

LABORATORY, MEDICAL OR DENTAL. An establishment primarily engaged in providing professional analytic or diagnostic services to the medical profession, or to the patient, on direction of a physician or engaged in the collection or storage of donated tissue, organs, blood, plasma or other human biological material; or an establishment primarily engaged in making dentures, artificial teeth and orthodontic appliances to order for the dental profession.

LOCAL STREET. See **STREET, LOCAL LODGE.** See **CLUB OR LODGE.**

LEARNING CENTER. A nontraditional public or private training, educational or tutoring facility.

LOT. A parcel of land occupied or used or intended for occupancy or use by a use permitted in this chapter, abutting on a public street, and of sufficient size to provide yards required by this chapter.

LOT AREA. The area of a lot in a horizontal plane bounded by the lot lines, but not including any area occupied by the waters of a duly recorded lake or river.

LOT, CORNER. A lot situated at the junction of, and abutting on two or more intersecting streets, or a lot at the point of deflection in alignment of a continuous street, the interior angle of which does not exceed 135 degrees.

LOT COVERAGE. The area of a zoning lot occupied by the principal building or buildings and any accessory buildings.

LOT DEPTH. The mean horizontal distance between the front lot line and the rear lot line of a lot.

LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. The property line bounding a lot, except that where any portion of a lot extends into the public right-of-way or a proposed public right-of-way, the line of the public right-of-way shall be the **LOT LINE** for applying this chapter.

LOT LINE, FRONT. The boundary of a lot which abuts an existing or dedicated public street, and in the case of a corner lot, it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the **FRONT LOT LINE** shall be designated by the owner and filed in the office of the Building Official.

LOT LINE, REAR. The boundary of a lot which is opposite the front lot line. If the **REAR LOT LINE** is less than ten feet in length, or if the lot forms a point at the rear, the **REAR LOT LINE** shall be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

LOT LINE, SIDE. Any boundary of a lot which is not a front lot line or a rear lot line.

LOT OF RECORD. Part of a subdivision, the final plat of which has been recorded in the office of the Register of Deeds; or a parcel of land, the deed to which was recorded in the office of the Register of Deeds prior to the effective date of this chapter.

LOT, THROUGH. A lot which has a pair of opposite lot lines abutting two substantially parallel streets, and which is not a corner lot. On a **THROUGH LOT**, both street lines shall be front lot lines for applying this chapter.

LOT WIDTH. The maximum horizontal distance between the side lot lines of a lot measured parallel to the front lot line and the required building setback line.

MANUFACTURED HOME. A structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established by Minnesota Building Code Chapter 1350 and Minn. Stat. §§ 327.31 through 327.35, as they may be amended from time to time.

MASSAGE THERAPY SERVICES. A course of treatment in which the practitioner applies massage techniques, with the intention of positively affecting the health and well-being on the client.

MOBILE HOME. See **MANUFACTURED HOME**.

MASSAGE SERVICES. The practice of applying structured or unstructured pressure, tension, motion or vibration, manually or with mechanical aids, to the soft tissues of the body, including muscles, connective tissue, tendons, ligaments, joints and lymphatic vessels, to achieve a beneficial response. Massage therapy must be performed by a licensed massage therapist or by other healthcare practitioners such as a chiropractor, osteopath or physical therapist.

MONEY TRANSMITTING BUSINESS. A person, business or organization other than the United States Postal Service that provides money transmitting or remittance services or issues or redeems money orders, travelers' checks and other similar instruments or any other person, business or organization who engages in the transmission of funds, including any person, business or organization who engages in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system and is not a depository institution.

MONEY TRANSMITTING SERVICE. A service that includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

MOTEL, MOTOR COURT or MOTOR HOTEL. A building or group of buildings other than a hotel used primarily as a temporary residence of a motorist.

MOTOR FREIGHT TERMINAL. A building or area in which freight brought by motor truck is transferred and/or stored for movement in intra-state or inter-state shipment by motor truck.

MOTOR FUEL STATION.

(1) A retail place of business engaged primarily in the sale of motor fuels, but also may be engaged in supplying goods and services generally required in the operation and maintenance of motor vehicles.

(2) It may include the sale of petroleum products and the sale and servicing of tires, batteries, automotive accessories, replacement items, lubrication services and the performance of minor automotive maintenance and repair. See § 153.382.

(3) The following uses may accompany a **MOTOR FUEL STATION**:

(a) Motor fuel station convenience stores which are operated in conjunction with a motor fuel station for the purpose of offering for sale goods not essential for the operation of motor vehicles;

(b) Car washes, as an accessory use; and

(c) Restaurants with a maximum seating capacity of 20 persons.

MOTOR HOTEL. See **MOTEL**.

MOTOR VEHICLE-RELATED USES. Uses that involve any motor vehicles. **MOTOR VEHICLE-RELATED USES** include, but are not limited to, motor fuel stations, car washes, vehicle repair facilities, maintenance garages, bus, truck or freight terminals, body shops, auto parts stores, auto accessory stores, retail tire stores, oil change facilities, muffler and brake shops, auto glass repair and replacement facilities, vehicle rental, vehicle sales and any other motor vehicle-related uses. **MOTOR VEHICLE-RELATED USES** do not include an auto-related use that is entirely an office use and does not involve the storage or care of any motor vehicles.

NONCONFORMING USE. See **USE, NONCONFORMING**.

NONRESIDENTIAL PROGRAM. A program that provides care, supervision, rehabilitation, training or habilitation of a person provided outside of the person's own home and provided for less than 24 hours per day.

NOXIOUS MATTER OR MATERIALS. Material capable of causing injury to living organisms by chemical reaction, or is capable of causing detrimental effects on the physical or economic well-being of individuals. See § 153.327.

NURSING HOME. A facility or part of a facility which provides nursing care to five or more persons and is licensed under Minn. Stat. Ch. 144A, as it may be amended from time to time, as a **NURSING HOME**. **NURSING HOME** does not include a facility or that part of a facility that is a hospital, doctor's office, diagnostic or treatment center, or a residential program licensed pursuant to Minn. Stat. §§ 245A.01 to 245A.16 or Minn. Stat. § 252.28, as they may be amended from time to time.

OFFICE OR CLINIC, MEDICAL. An establishment principally engaged in providing therapeutic, preventative, corrective, healing and health-building treatment services on an outpatient basis by physicians and other similarly licensed practitioners. Typical uses include medical and chiropractic offices or clinics.

OFFICE, DENTAL. An establishment principally engaged in providing preventative, corrective and treatment services on an outpatient basis by dentists and other similarly licensed practitioners.

OPEN SALES LOT. Land devoted to the display of goods for sale, rent, lease or trade where the goods are not enclosed within a building.

ORDINARY HIGH WATER MARK. A mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The **ORDINARY HIGH WATER MARK** is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

PARTICULATE MATTER. Dust, smoke or any other form of air-borne pollution in the form of minute separate particles. See § 153.326.

PAWNBROKER. A person, partnership or corporation, either as principal, or agent or employee thereof, who loans money on deposit or pledge of personal property or other valuable thing; who deals in the purchasing of personal property or other valuable thing on condition of selling that same back again at a stipulated price; or who loans money secured by chattel mortgage or on personal property, taking possession of the property or any part thereof so mortgaged. To the extent that a **PAWNBROKER** business includes buying personal property previously used, rented or leased, all provisions in the city code and this chapter regarding pawnshops shall be applicable. Any bank, savings and loan association or credit union shall not be deemed a **PAWNBROKER**.

PAWNSHOP. The location at which or premises in which a pawnbroker regularly conducts business.

PERFORMANCE STANDARD. Criterion established to control noise, odor, toxic or noxious matter, vibration, fire and explosive hazards, or glare or heat generated by or inherent in uses of land or buildings. See § 153.325 through 153.332.

PERMITTED USE. See **USE, PERMITTED**.

PERSONAL COMMUNICATIONS SERVICES. Personal wireless services including cellular, commercial wireless services, specialized mobilized radio, enhanced specialized mobilized radio, paging and similar services that are marketed to the general public. See § 153.397.

PET CARE FACILITY. Any premises where four or more domestic animals over four months of age are owned, boarded, bred or offered for sale.

PRINCIPAL BUILDING. See **BUILDING, PRINCIPAL.**

PRINCIPAL USE. See **USE, PRINCIPAL.**

PROPERTY LINE GRADE. The elevation of the property line in front of a building measured at the center of the building. Where no **PROPERTY LINE GRADE** has been established, the mean elevation of the finished lot grade at the property line shall be considered the "existing" **PROPERTY LINE GRADE.**

PUBLIC WATERS. Any waters of the state as defined in Minn. Stat. § 103G.005(15), as it may be amended from time to time.

PUMP SETBACK. The distance from the street right-of-way line to the centerline of the motor fuel station pump island measured as a perpendicular distance from the right-of-way.

REAR LOT LINE. See **LOT LINE, REAR.**

REAR YARD. See **YARD, REAR.**

PYROTECHNIC SPECIAL EFFECTS MATERIAL. A chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration or detonation. The chemical mixture consists predominantly of solids capable of producing a controlled, self-contained exothermic chemical reaction that results in heat, gas, sound, light or a combination of these effects. The chemical reaction functions without external oxygen.

REFLEXOLOGY SERVICES. The act of applying pressure with the thumb, finger and hand to specific areas of the feet, hands and outer ears, without the use of oils, lotions, creams or tools.

RESIDENTIAL CARE FACILITY, STATE LICENSED. A living unit providing 24-hour care established primarily for the accommodation and treatment of persons who are diagnosed with mental illness, a developmental disability, a physical disability or chemical dependency.

RESIDENTIAL HOSPICE FACILITY. A facility that resembles a single-family residence located in an R District that directly provides residential and support services 24 hours per day in a home-like setting for hospice patients as an integral part of the continuum of home care provided by a hospice and that houses: no more than eight hospice patients; or at least nine and no more than 12 hospice patients with the approval of the city, notwithstanding Minn. Stat. § 462.357(8), as it may be amended from time to time.

RESIDENTIAL PROGRAM. A program that provides care, supervision, food, lodging, rehabilitation, training, education, habilitation or treatment outside of the person's own home on a 24 hours per day basis.

SATELLITE DISH ANTENNA. An antenna, usually parabolic or spherical in shape, capable of receiving television or radio signals from orbiting satellites. See § 153.396.

SECONDHAND GOODS DEALER. A person other than a pawnbroker, engaged in whole or in part in the business of purchasing or selling used personal property or items.

SETBACK. The minimum horizontal distance between a structure and the street or lot line (unless specifically related to the street centerline), disregarding steps and overhangs.

SHELTER FOR BATTERED PERSONS. A facility that occupies one main building, or portion thereof, where adults and children who have suffered assault live on a 24 hours per day basis for a period of time.

SHORELAND. Land located within the following distances from the ordinary high water mark of public waters: 1,000 feet from the ordinary high water mark of a lake, pond or flowage; and 300 feet from a river or stream, or the landward side of a floodplain on such rivers or streams, whichever is greater. The practical limits of shorelands may be less than the statutory limits where the limits are designated by natural drainage divides at lesser distances, as shown on the official zoning map of the city. See §§ 153.410 through 153.416.

SIDE YARD. See **YARD, SIDE.**

SIGN. Any device which is displayed or placed outdoors in view of the general public for the purpose of directing attention to a product, service, place, activity, business, institution or person. The device shall include any written announcement, declaration, display, illustration, insignia, symbol, logo, balloon, banner, pennant and shall also include forms shaped to resemble any human, animal or product. ***SIGNS*** shall include devices which bear lettered, pictorial or sculptured matter and are affixed to, painted on, or represented directly or indirectly upon a building or other outdoor surface or parcel of land. ***SIGNS*** shall also include devices which form a component part of any building, marquis, canopy, awning, street clock, pole, parked vehicle or other object whether stationary or movable. See §§ 153.430 through 153.438 and §§ 150.105 through 150.110.

SPA. A business establishment that provides consumers with access to one of the following beauty-related personal services, including, but not limited to, manicures, pedicures, waxing, chemical peels or similar services. Massage services may be offered incidental and secondary to the personal services identified herein, as long as it is performed by a licensed massage therapist.

STORY. The portion of a building included between the upper surface of any floor and the upper surface of the floor next above. The top ***STORY*** in a building shall be the portion of a building included between the upper surface of that floor and the ceiling or roof above. Usable or unused under-floor space shall be considered a ***STORY*** if there is a finished floor level directly above it which is: more than six feet above grade as defined herein for more than 50% of the total perimeter; or is more than 12 feet above grade as defined herein at any point.

STREET. A public right-of-way which affords a primary means of access to abutting property.

STREET, ARTERIAL. A street which provides for traffic movement to and from municipalities and the surrounding areas, to and from freeways/expressways and collector streets, and between major parts of an urban area. Intersections are at grade and direct access to abutting property should be avoided.

STREET, COLLECTOR. A street which collects and distributes the internal traffic within an area of a community such as a residential neighborhood or industrial district, and between arterial and local streets. It provides some access to abutting property.

STREET, LOCAL. A street of little or no continuity, designed to provide access to abutting property and ideally leading into collector streets.

STRUCTURAL ALTERATION. Any change, other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, beams, girders or foundations.

STRUCTURE. That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

STRUCTURE, NONCONFORMING. That which was built or constructed prior to the effective date of this chapter, which does not comply with all the regulations of this chapter or any amendments hereto governing the zoning district in which the structure is located. See § 153.006.

SUPPORTIVE SERVICES. Providing supervision and minimal assistance with independent living skills. ***SUPPORTIVE SERVICES*** include assistance with transportation, arranging for meetings and appointments, arranging for medical and social services, help with laundry, handling personal funds of residents and personal shopping assistance.

TATTOOING. Any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. ***TATTOOING*** also includes micro-pigmentation and cosmetic tattooing.

TOWER. Any ground or roof mounted pole, spire, structure or combination thereof, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of mounting an antenna, meteorological device or similar apparatus above grade.

TOWNHOUSE. A dwelling unit attached to other dwelling units by common walls. The dwelling units are side by side with common walls extending from the foundation to the roof without any portion of one dwelling unit located over any portion of another. Each dwelling unit has a separate entrance from outside the building.

TWIN HOME. See ***DWELLING, TWO-FAMILY.***

USE. The purpose or activity for which the land or building thereon is designated, arranged or intended, or for which it is occupied or maintained, and shall include any manner of performance of the activity with respect to the performance standards of this chapter.

USE, CONDITIONAL. A land use that is generally compatible with all other uses in the district within which it is located but should not be permitted as a matter of right in every area within the district because of special circumstances that the use or location may

present. Those uses shall be judged on the basis of standards and criteria specified in this chapter. The city may impose appropriate conditions and restrictions to a conditional use permit. See § 153.028.

USE, INCOMPATIBLE. A use which is incapable of direct association with certain other uses because it is contradictory, incongruent or discordant.

USE, INTERIM. A temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

USE, NONCONFORMING. A use of land, building or structures existing prior to the effective date of this chapter which does not comply with all the regulations of this chapter or any amendments hereto governing the zoning district in which such use is located. See § 153.006.

USE, PERMITTED. A use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations and performance standards (if any) of the district.

USE, PRINCIPAL. The main use of land or buildings as distinguished from subordinate or accessory uses. A ***PRINCIPAL USE*** may be either permitted or conditional.

USED MERCHANDISE STORE. A store primarily engaged in the retail sale of used merchandise and secondhand goods such as clothing and shoes; furniture; musical instruments; office furniture; phonographs; records, tapes and compact discs; sports equipment and paraphernalia; and store fixtures and equipment.

VARIANCE. A legally permitted deviation from the literal requirements of this chapter. See § 153.027.

VEHICLE REPAIR, MAJOR. An establishment engaged in performing major repairs and service to passenger automobiles, trucks, vans and motorcycles. ***MAJOR REPAIR*** may include all activities of repair or servicing allowed in a minor automobile repair establishment as well as major engine and transmission repair and replacement. The rebuilding or reconditioning of passenger automobiles, body, frame or fender straightening, painting, rust-proofing, engines, upholstery or other similar activities.

VEHICLE REPAIR, MINOR. An establishment engaged in performing minor repairs and service to passenger automobiles, trucks, vans and motorcycles. ***MINOR REPAIR*** may include muffler replacement, oil and fluid changing and lubrication, tire repair and replacement, wheel alignment, brake repair, suspension repair, minor engine and transmission repair, flushing of radiators, servicing of air conditioners, auto glass repair or replacement, and similar minor repairs and service.

VETERINARY ESTABLISHMENT. A building or structure which provides facilities for the diagnoses, treatment and medical care of animals, including animal or veterinary hospitals.

WIND TURBINE. A machine that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

YARD. A required open space on a lot, which is unoccupied and unobstructed by a structure from its lowest ground level to the sky except as expressly permitted in this chapter. A ***YARD*** shall extend along a lot line and at angles to the lot line to a depth or width specified in the yard regulations for the district in which the lot is located. See § 153.008.

YARD, FRONT. A yard extending along the full width of the front lot line between side lot lines and extending from the abutting front street right-of-way line to a depth required in the yard regulations for the district in which the lot is located.

YARD, REAR. A yard extending along the full width of the rear lot line between the side lot lines and extending toward the front lot line for a depth as specified in the yard regulations for the district in which the lot is located.

YARD, SIDE. A yard extending along the side lot line between the front and rear yards, having a width as specified in the yard regulations for the district in which the lot is located.

ZONING ADMINISTRATOR. The officer designated by the City Manager charged with the administration and enforcement of this chapter. See § 153.025(A).

ZONING DISTRICT. An area or areas within the limits of the city for which the regulations and requirements governing use, lot size and bulk of buildings and premises are uniform.

ZONING MAP. The map setting forth the boundaries of the zoning districts of the city, which is a part of this chapter. See § 153.011(B).

(Ord. passed 10-11-1963; Ord. 98-09, passed - -; Ord. 98-19, passed - -; Ord. 00-20, passed - -; Ord. 02-11, passed - -; Ord. 02-21, passed - -; Ord. 03-02, passed - -; Ord. 03-04, passed - -; Ord. 04-15, passed - -; Ord. 05-01, passed - -; Ord. 07-08, passed - -; Ord. 07-09, passed - -; Ord. 08-17, passed - -; Ord. 08-18, passed - -; Ord. 09-15, passed - -; Ord. 11-08, passed - -; Ord. 12-27, passed - -; Ord. 14-04, passed 8-11-2014; Ord. 14-05, passed 9-8-2014; Ord. 15-01, passed 4-27-2015; Ord. 16-02, passed 2-22-2016; Ord. 16-12, passed 11-14-2016)

§ 153.005 SEPARABILITY.

It is hereby declared to be the intention of the Mayor and City Council that the several provisions of the chapter are separable in accordance with the following.

(A) If any court of competent jurisdiction shall adjudge any provision of this chapter to be invalid, the judgment shall not affect any other provision of this chapter not specifically included in the judgment.

(B) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter to a particular property building, or other structure, that judgment shall not affect the application of the provision to any other property, building or structure not specifically included in that judgment.

(Ord. passed 10-11-1963)

§ 153.006 NONCONFORMING USES AND STRUCTURES.

(A) Any structure or use lawfully existing upon the effective date of this chapter may be continued at the size and in the manner of operation existing upon the date except as hereinafter specified.

(B) When a structure is declared unsafe by the Building Official, this chapter shall not prohibit the building from being made safe.

(C) When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.

(D) Whenever a lawful nonconforming structure shall have been damaged by fire, flood, explosion, earthquake, war, riot or act of God, it may be reconstructed and used as before if it is reconstructed within twelve months after the calamity, unless the damage to the building or structure is 50% or more of its fair market value. If the damage is 50% or more of its fair market value, the reconstruction shall be for a use in accordance with the provisions of this chapter, unless within six months, the owner applies for a conditional use permit for approval to reconstruct a nonconforming structure for its use prior to the damage. The Council may grant the permit, providing the structure complies with other ordinance requirements.

(E) Whenever a lawful nonconforming use of a structure or land is discontinued for a period of one year, any future use of the structure or land shall be in conformity with the provisions of this chapter.

(F) Any lawful nonconforming use of land not involving a structure, and any lawful nonconforming use involving a structure with an assessor's full and true valuation upon the effective date of this chapter of \$1,000 or less may be continued for a period of 36 months.

(G) Any lawful nonconforming use of a structure or parcel of land may be changed to a similar nonconforming use or to a more restrictive nonconforming use; however, once a structure or parcel of land has been placed in a more restrictive nonconforming use, it shall not return to a less restrictive nonconforming use.

(H) Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is required, including necessary non-structural repairs and incidental alterations which do not extend or intensify the nonconforming use.

(I) Alterations may be made to a building containing lawful nonconforming residential units when they will improve the liability thereof, provided they will not increase the number of dwelling units or bulk of the building.

(Ord. passed 10-11-1963; Ord. 01-14, passed - -)

§ 153.007 LOT PROVISIONS.

(A) A lot of record existing upon the effective date of this chapter in an R Residence District, which does not meet the

requirements of this chapter as to area or width may be utilized for single-family dwelling purposes in R-1 zones and two-family dwelling purposes in R-2 zones; provided the measurements of the area and width are within 70% of the requirements of this chapter, but the lot of record shall not be more intensively developed unless combined with one or more abutting lots or portions thereof so as to create a lot meeting the requirements of this chapter.

(B) Except in the case of planned developments and multi-family residential as provided for hereinafter, no more than one principal building shall be located on a zoning lot.

(Ord. passed 10-11-1963)

§ 153.008 REQUIRED YARDS AND OPEN SPACE.

(A) No yard or other open space shall be reduced in area or dimension so as to make the yard or other open space less than the minimum required by this chapter, and if the existing yard or other open space is less than the minimum required, it shall not be further reduced.

(B) No required yard or other open space allocated to a building or dwelling group shall be used to satisfy yard, other open spaces or minimum lot area requirements for any other building.

(C) The following shall not be considered to be encroachments on yard requirements:

(1) Chimneys, flues, leaders, sills, pilasters, lintels, ornamental features, mechanical devices, cornices, eaves and gutters, provided they do not extend more than two feet from the dwelling;

(2) Yard lights and name plate signs for one- and two-family dwellings in the R-1 and R-2 Districts, lights for illuminating parking areas, loading areas or yards for safety and security purposes, provided the direct source of light is not visible from the public right-of-way or adjacent residential property, and may be located to within five feet of the front lot line;

(3) Terraces, steps, uncovered porches, stoops or similar structures, which do not extend above the height of the ground floor level of the principal building or extend more than two feet from any lot line, or extend more than six feet from the principal structure;

(4) Bay windows not to exceed a depth of two feet nor to contain an area of more than 20 square feet, nor more than two feet from any lot line;

(5) Rear yard only: balconies, breezeways, detached outdoor picnic shelters and recreational equipment, except as regulated hereinafter;

(6) Egress window wells that are not more than two feet from any lot line; and

(7) Traffic directional signs, street name signs or other signs which have been authorized and erected by a government body.

(D) Through lots in any district shall have a required front yard on each street.

(E) In any R District, if a lot in question is adjacent to and within the same blockfront as two lots with an average front yard setback that is either greater than or less than the minimum front yard setback requirements for the district, then the required front yard setback for the lot in question shall not be less than the average front yard setback of the two existing front yards. The depth of a front yard setback shall not be less than ten feet.

(F) Within the B-2 District, side yard setbacks may be modified to permit party walls. Party walls, where constructed as a part of a joint simultaneous development involving two or more buildings, may be built with no side yard requirement, subject to the granting of a conditional use permit by the City Council.

(G) Attached decks shall be considered part of the principal structure and shall conform to applicable setbacks.

(Ord. passed 10-11-1963)

§ 153.009 HEIGHT LIMITATIONS.

(A) Height limitations set forth elsewhere in this chapter shall be increased 50% when applied to the following structures:

(1) Belfries;

(2) Chimneys and smokestacks;

(3) Church spires;

(4) Cooling towers;

(5) Cupolas and domes which do not contain useable space;

(6) Parapet walls extending not more than three feet above the limiting height of the building; and

(7) Radio and television antennas, but in no case shall the height limit exceed 65 feet. Radio and television antennas are subject to the provisions in § 153.395.

(B) Height limitations set forth in this chapter may be increased 100% when applied to flag poles.

(C) In the R-3 and R-4 Districts, the maximum height applied to flag poles and radio and television antennas, shall be 50 feet or twice the height of the principal building, whichever is greater, but in no case shall the height limit exceed 65 feet.

(D) On any lot sloping down-hill from the street, if that portion of the lot to be occupied by the main building has an average ground slope of 25% or more (measured in the general direction of the side lot lines), then an additional 12 feet of height may be permitted in the main building as long as the lowest floor is not less than ten feet below the average established property line grades along the front of the lot. The floor of the basement shall be considered the lowest floor.

(E) Municipal and school structures shall be exempted from the height limitations set forth in this chapter.

(F) Antenna towers for telecommunications and personal wireless services shall not exceed 170 feet in height, including antenna attachments, as provided in § 153.397.

(Ord. passed 10-11-1963)

§ 153.010 ESSENTIAL SERVICES.

Essential services shall be permitted as authorized and regulated by state law and ordinances of the city, it being the intention that such are exempt from the application of this chapter.

(Ord. passed 10-11-1963)

§ 153.011 ZONING DISTRICTS AND MAP.

(A) *Zoning districts.* For the purposes of this chapter, the city is hereby divided into the following use districts and groups of use districts:

(1) "R" Residence Districts:

(a) "R-1A" One-Family Residential District;

(b) "R-1B" One-Family Residential District;

(c) "R-1C" One-Family Residential District;

(d) "R-2" Two-Family Residential District;

(e) "R-3" Townhouse 3-8 Unit Residential District; and

(f) "R-4" Multiple-Family 3-16 Unit Residential District.

(2) "B" Business Districts:

(a) "B-1" Limited Business District;

(b) "B-2" Neighborhood Business District;

(c) "B-3" General Business District;

- (d) "B-4" Shopping Center District;
 - (e) "B-5" Gateway North Mixed Use District; and
 - (f) "B-6" Town Center Mixed Use District.
- (3) "I" Industrial Districts:
- (a) I-1 Light Industrial; and
 - (b) I-2 General Industrial.
- (4) "C" Conservancy District; and
- (5) "PD" Planned Development District:
- (a) "PRD" Planned Residential Development District; and
 - (b) "PMD" Planned Multi-Use Development District.

(B) *Map.* The boundaries of the above districts are established as shown on the map entitled "Zoning Map, City of West St. Paul," which is properly approved and filed in the Office of the City Clerk, hereinafter referred to as the "zoning map." The map and all of the notations, references and other information shown thereon shall have the same force and effect as if stated in this chapter and are hereby incorporated by reference.

(C) *Boundaries.*

- (1) District boundary lines as indicated on the zoning map conform to the following:

- (a) Lot lines;
- (b) Centerline of streets or alleys;
- (c) Centerline of streets or alleys projected; and

(d) Corporate limit lines, all as they exist upon the effective date of this chapter. If district boundary lines do not follow any of the above described lines, the district boundary lines are established as drawn on the zoning map.

(2) Appeals from the Zoning Administrator's determination and questions of doubt concerning the exact location of district boundary lines shall be heard by the Committee of Adjustments.

(3) Whenever any street, alley or other public way is vacated by official action of the city, the zoning district abutting the centerline of the alley or public way shall not be affected by the proceeding.

(Ord. 07-08, passed - -; Ord. 12-04, passed - -; Ord. passed 10-11-1963; Ord. 13-05, passed 10-14-2013)

ADMINISTRATION AND ENFORCEMENT

§ 153.025 ENFORCING OFFICER.

(A) *Zoning Administrator.* This chapter shall be administered and enforced by the Zoning Administrator, who shall be appointed by the City Manager. In furtherance of the authority, the Zoning Administrator shall:

- (1) Determine that all building permits comply with the terms of this chapter;
- (2) Conduct inspections of buildings and use of land to determine compliance with the terms of this chapter;
- (3) Maintain permanent and current records of this chapter including but not limited to, all maps, amendments and conditional uses, variances, appeals and applications therefor;
- (4) Receive, file and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies;

- (5) Institute in the name of the city any appropriate actions or proceedings against a violator as provided by law; and
- (6) Serve as an ex-officio non-voting member of the Planning Commission and the Committee of Adjustments.

§ 153.026 APPEALS.

(A) *Appeal to Committee of Adjustments.* Within 60 days after the decision of the Zoning Administrator, except in connection with criminal prosecutions for violations thereof, the applicant or other person or officers of the city affected thereby may appeal to the Committee of Adjustments by filing a written notice with the City Clerk stating the action from which the appeal is made and the specific reasons for the appeal.

(B) *Appeals from decisions by the Committee of Adjustments.*

(1) The City Council may review and revise any decision of the Committee of Adjustments, and shall review the decision upon written request of the Zoning Administrator, a member of the City Council, or any affected person. The request for review of the decision must be made to the City Council in writing within 20 days after the decision is made by the Committee of Adjustments. The request for review shall be served on the City Clerk or the Mayor. In reviewing the decisions, the City Council shall set a date for hearing thereon not less than 15 days after nor more than 45 days after the service of the request for Council review.

(2) Notice of hearing before the City Council shall be mailed to all affected persons, including the Chairperson and Vice Chairperson of the Committee of Adjustments. In all cases involving determination of district boundary lines, or interpretation of the text of the ordinance, ten days published notice of hearing in the official newspaper shall be given.

(3) In the absence of an appeal, the Committee of Adjustments' decision shall be final.

(Ord. passed 10-11-1963)

§ 153.027 VARIANCES.

(A) *Purpose/standards.*

(1) *Authority.* Pursuant to Minn. Stat. § 462.357(6), as it may be amended from time to time, the Committee of Adjustments may grant a variance from the terms of this chapter.

(2) *Criteria for granting a variance.* A variance may only be granted by the Committee of Adjustments when:

- (a) The variance is in harmony with the general purpose and intent of this chapter;
- (b) The terms of the variance are consistent with the Comprehensive Plan; and
- (c) The applicant for the variance establishes that there are practical difficulties in complying with this chapter.

(3) *Definition of practical difficulties.* **PRACTICAL DIFFICULTIES**, as used in connection with the granting of a variance, means that:

- (a) The property owner proposes to utilize the property in a reasonable manner;
- (b) The plight of the property owner is due to circumstances unique to the Property that were not created by the property owner; and
- (c) The variance will not alter the essential character of the neighborhood.

(4) *Restrictions on granting variances.* The following restrictions shall be applied when considering granting a variance:

- (a) Economic considerations alone do not constitute practical difficulties; and
- (b) The Committee of Adjustments may not permit as a variance any use that is not allowed in this chapter for property in the district where the affected person's land is located (i.e., a use variance).

(5) *Imposition of conditions.* The Committee of Adjustments may impose conditions when granting a variance, however, conditions imposed must be directly related to and must bear a rough proportionality to the impact created by the variance.

(6) *Written findings.* In granting a variance, the Committee of Adjustments shall make written findings stating the grounds upon which the variance is justified.

(B) *Exhibits.* In addition to the application, the following exhibits shall be required:

- (1) Map or plat as listed on the application;
- (2) Plans and drawings showing the proposed variance; and
- (3) Other documents as required by the Zoning Administrator.

(C) *Public hearings.* The Committee of Adjustments shall hold a public hearing on all applications for a variance.

(1) Notice of the public hearing shall be given not less than ten days nor more than 30 days prior to the date of the hearing by publication in the designated legal newspaper of the city. The notice shall contain the date, time and place of the hearing and a description of the land and the proposed variance. At least ten days before the hearing, the City Clerk shall mail a notice to the owner and to each of the property owners within 150 feet of the property for which the variance is sought. Failure of the City Clerk to mail the notice or failure of the property owners to receive the notice shall not invalidate the proceedings.

(2) Action by Committee of Adjustments: the Committee of Adjustments shall consider the application at the scheduled hearing.

(a) Within 60 days after the date of receipt of the completed application by the Committee of Adjustments, the Committee must approve or deny the application. Failure of the Committee to deny a request within 60 days or any extension thereof as provided in division (C)(2)(c) below is approval of the request.

(b) The time limit begins upon the receipt of a completed application. A completed application shall mean a written request containing all information required by law, or by a previously adopted rule, ordinance or policy of the city. If the Zoning Administrator receives an application that does not contain all the required information, the City Clerk shall send notice within 15 business days of the receipt of the request telling the applicant that the application is not accepted and indicating what information is missing. The 60-day time limit begins again after receipt of a completed application, as in division (C)(2)(a) above.

(c) The city may extend the time limit before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notice must contain the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

(d) The applicant may waive the 60-day period by providing a written waiver.

(D) *Denial.* The Committee of Adjustments may deny an application for a variance upon a written finding of legally sufficient reasons with a factual basis. No application for a variance which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of changes of conditions found to be valid by the Committee of Adjustments.

(E) *Lapse of variance.* A variance shall lapse and become null and void one year following the date on which the variance became effective, unless prior to the expiration of one year the work or improvement described in the variance is commenced and diligently pursued on the subject site. A variance may be extended once by the City Council for a period of six months. For any commercial use, failure to maintain the property may result in revocation of any extension.

(F) *Revocation.* A violation of any condition set forth in granting a variance shall be a violation of this chapter and shall terminate the variance. A revocation resulting in termination of a variance may be appealed as set forth in § 153.026(B).

§ 153.028 CONDITIONAL USES.

(A) *Purpose/standards.*

(1) In order to give flexibility to the district use regulations of this chapter, which is necessary to achieve the objectives of the Comprehensive Plan, conditional uses are permitted in certain districts subject to the granting of a use permit.

(a) Because of their unusual characteristics, conditional uses require special consideration so they may be located properly with respect to the objectives of the Comprehensive Plan and with respect to their effects on surrounding properties. In order to achieve these purposes, the City Council is empowered to grant and to deny applications for conditional use permits and to impose reasonable conditions upon the granting of these permits.

(b) Uses authorized by conditional permit under this section shall be considered a conforming use, but only in accordance with the conditions set forth in the conditional use permit.

(2) A conditional use permit may be granted by the City Council after demonstration by evidence that:

(a) The proposed location of the conditional use is in accord with the objectives of the Comprehensive Plan, and the purposes of the district in which the site is located;

(b) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare;

(c) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the surrounding area;

(d) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;

(e) Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;

(f) Adequate measures have been or will be taken to provide ingress or egress so designated as to minimize traffic congestion in the public streets; and

(g) The conditional use shall, in all other respects, conform to the applicable regulations of the specific district in which it is located, and of this chapter in general.

(3) The Planning Commission may recommend, and the City Council may stipulate the conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary for the protection of the public interest and to secure compliance with the requirements specified in this chapter.

(B) *Exhibits.* The following exhibits shall be required:

(1) Map or plat as listed on the application form;

(2) Plans and drawings as listed on the application form; and

(3) Other documents as required by the Zoning Administrator.

(C) *Public hearings.* The Planning Commission and the City Council shall each hold at least one public hearing on all applications for conditional use permits.

(1) Notice of the public hearing shall be given not less than ten days nor more than 30 days prior to the date of the hearing by publication in the designated legal newspaper of the city. The notice shall contain the date, time and place of the hearing and a description of the land and the proposed conditional use. At least ten days before the hearing, the City Clerk shall mail an identical notice to the owner and to each of the property owners within 350 feet of the property for which the conditional use permit is sought. Failure of the City Clerk to mail the notice or failure of the property owners to receive the notice shall not invalidate the proceedings.

(2) Action by City Council: The City Council must approve or deny the application within 60 days after receipt of all information requested by the city. The time limitation and extension of time are the same as set forth in § 153.027(C)(2).

(D) *Denial.* The City Council may deny an application for a conditional use permit upon a written finding of legally sufficient reasons with a factual basis. No application for a conditional use permit which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of changes of conditions found to be valid by the City Council.

(E) *Lapse of conditional use permit.* A conditional use permit shall lapse and become null and void one year following the date on which the conditional use permit became effective, unless prior to the expiration of one year a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion on the subject site, or a certificate of occupancy is issued by the Building Official for the subject site or structure. A conditional use permit may be extended once for a period of six months by the City Council. For any commercial use, failure to maintain the property may result in revocation of any extension.

(F) *Revocation.* A violation of any condition set forth in a conditional use permit shall be a violation of this chapter and shall terminate the conditional use permit.

(G) *Filing.* A certified copy of any conditional use permit shall be filed with the County Recorder or Registrar of Titles.

§ 153.029 INTERIM USES.

(A) *Purpose/standards.*

(1) In order to give flexibility to the district use regulations of this chapter, which is necessary to achieve the objectives of the Comprehensive Plan, interim uses are allowed in certain districts subject to the granting of an interim use permit. Because of their temporary characteristics, interim uses require special consideration so they may be located properly with respect to the objectives of the Comprehensive Plan and with respect to their effects on surrounding properties. In order to achieve these purposes, the City Council is empowered to grant and to deny applications for interim use permits and to impose reasonable conditions upon the granting of these permits. Uses authorized under this section shall be considered a conforming use, but only in accordance with the conditions set forth in the interim use permit.

(2) The City Council may grant an interim use permit for the interim use of property if:

(a) The use conforms to the zoning regulations;

(b) The date or event that will terminate the use can be identified with certainty;

(c) Permission of the use will not impose additional costs on the city if it is necessary for the city to take the property in the future; and

(d) The user agrees in writing to any conditions that the City Council deems appropriate for permission of the use.

(B) *Exhibits.* The following exhibits shall be required:

(1) Map or plat as listed on the application form;

(2) Plans and drawings as listed on the application form; and

(3) Other documents as requested by the Zoning Administrator.

(C) *Hearings.*

(1) The Planning Commission shall hold a public hearing on the application following notice of the time, place and purpose of the hearing published in the official newspaper of the city at least ten days prior to the day of the hearing. Following the public hearing, the Planning Commission shall forward its recommendation to the City Council. The Planning Commission may recommend and the City Council may stipulate conditions and restrictions upon the establishment, location, construction, maintenance and operation of the interim use as deemed necessary for the protection of the public interest and to secure compliance with the requirements specified in this chapter.

(2) The City Council shall approve or deny the application pursuant to § 153.028(C)(2).

(D) *Denial.* The City Council may deny an application for an interim use permit upon a written finding of legally sufficient reasons with a factual basis. No application for an interim use permit that has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of changes of conditions found to be valid by the City Council.

(E) *Lapse of interim use permit.* An interim use permit shall lapse and become null and void three months following the date on which the interim use permit became effective if it is not in use.

(F) *Revocation/termination.* A violation of any condition set forth in an interim use permit shall be a violation of this chapter and shall terminate the interim use permit.

(G) *Exceptions.* Notwithstanding the provision of division (C) above, an interim use shall not require a hearing before the Planning Commission or City Council and may be approved administratively, provided that:

(1) The application is a renewal of an interim use permit which was previously approved by the City Council pursuant to division (C);

(2) There have been no issues or violations with the existing interim use permit;

- (3) There are no substantial changes to the interim use permit as determined by the Zoning Administrator;
- (4) The Community Development Department has conducted an administrative review; and
- (5) The property owner on which the interim use permit is located is current on all city fees.

(Ord. 01-15, passed - -; Ord. passed 10-11-1963; Ord. 16-07, passed 6-13-2016)

§ 153.030 AMENDMENTS TO A ZONING DISTRICT.

(A) *Purpose/standards.* This chapter may be amended and the boundaries of any district or text of this chapter may be changed in accord with the procedure prescribed in this section. Amendments may be made by an affirmative vote of four members of the City Council; however, the adoption or amendment of any portion of a zoning ordinance that changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires an affirmative vote of five members of the City Council.

(1) Proceedings for amendment of this chapter may be initiated by:

- (a) A petition of the owner or owners of the actual property to be rezoned;
- (b) The Planning Commission; or
- (c) The City Council.

(2) All applications for amendments which are initiated by property owners shall be filed with the Zoning Administrator who shall forward the application to the Planning Commission.

(3) An amendment to this chapter may be granted by the City Council after demonstration by evidence that:

- (a) The proposed location of the amendment is in accord with the objectives of the Comprehensive Plan; and
- (b) The amendment will not impede the normal and orderly development and improvement of surrounding property.

(B) *Exhibits.* If the application involves the changing of zoning districts and boundaries thereof, the application shall be accompanied by the following:

- (1) Map or plat as listed on the application form;
- (2) Written proof of ownership of the property for which the rezoning is requested; and
- (3) Other documents as requested by the Zoning Administrator.

(C) *Public hearings.* The Planning Commission shall hold at least one public hearing on all applications for amendments.

(1) Notice of the public hearing shall be given not less than ten days nor more than 30 days prior to the date of the hearing by publication in the designated legal newspaper of the city. The notice shall contain the date, time and place of the hearing and a description of the land and proposed change in zoning, if relevant. When an amendment involves changes in district boundaries, at least ten days before the hearing, the City Clerk shall mail an identical notice to the owner and to each of the property owners within 350 feet of the property for which the amendment is sought. Failure of the City Clerk to mail the notice or failure of the property owners to receive the notice shall not invalidate the proceedings.

(2) Action by City Council: The City Council must approve or deny the application pursuant to § 153.028(C)(2).

(D) *Denial.* The City Council may deny an application upon a written finding of legally sufficient reasons with a factual basis that the proposed application is not in the best interest of the physical development of the city. No application which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the Planning Commission.

(Ord. passed 10-11-1963)

§ 153.031 SITE PLAN APPROVAL PROCEDURE AND DESIGN REQUIREMENTS IN RESIDENTIAL DISTRICTS.

(A) It is declared to be the policy of the city to preserve, protect and promote attractive and well-maintained residential

environments for its citizens.

(B) For the protection of residential areas, imaginative site design concepts shall be employed in the development of respective sites.

(C) With the exception of single-family dwellings and two-family dwellings, this site plan approval process applies to all new construction in the R-1, R-2, R-3 and R-4 zoning districts.

(D) The following rules shall govern applications for site plan approval.

(1) *Application.*

(a) Prior to commencing any construction, a "site plan approval" application shall be initiated by the owner of subject property or by an authorized agent. The applicant shall submit a "site plan approval" application to the Zoning Administrator, copies of which are available at the municipal offices, together with a fee in an amount established by City Council resolution. A completed application shall be filed at least 23 days prior to the next regular meeting of the Planning Commission.

(b) The Zoning Administrator shall refer the matter to the Planning Commission by placing the application upon the agenda of the Commission's next regular meeting.

(2) *Exhibits.* In addition to the application, the following exhibits shall be required:

(a) A survey drawing by a registered engineer or land surveyor showing pertinent existing conditions showing an inventory of all existing trees six-inch caliper and larger by species and size. Trees shall be identified on the drawing as quality or non-quality type trees. Quality trees shall be those types as stated in division (D)(4)(b) below. The drawing will be accurately dimensioned; and

(b) A complete set of preliminary drawings prepared by a registered civil engineer or landscape architect showing:

1. An accurately scaled and dimensioned site plan indicating parking layout, including access provisions, location of structures, building elevations landscaping, including trees and shrubbery with indication of species, planting, size and location;
2. Fences or walls or other screening, including height and type of material;
3. Lighting provisions, including type and location; and
4. Curbs; and

(c) Other documents as requested by the Zoning Administrator.

(3) *Drive aisle/parking setback and curbing standards.*

(a) All parking lots shall be curbed with B-6-12 or better concrete curbing.

(b) Curbed islands must be placed at the end of every row of parking spaces.

(c) Off-street parking and drive aisle setback standards:

Front yard	20 feet
Rear yard	10 feet
Rear yard abutting R District	20 feet
Side corner	20 feet
Side yard	10 feet
Side yard abutting R District	20 feet

(4) *Landscape standards.*

(a) The off-street parking setback area shall be utilized as a protective buffer. The protective buffer shall not be used for parking, drive aisles, off-street loading or storage and shall be landscaped.

(b) Minimum landscape requirements in the protective buffer shall include the following "quality type trees," one two and one-half inch diameter at four feet above grade caliper deciduous tree, which shall be, hardwood type trees such as, maple, seedless green ash, locust or basswood, or six-foot conifer type trees, such as Colorado blue spruce, white pine, red pine or pyramidal arborvitae, or other approved types. The number of trees required is the equivalent of one for every 40 feet lineal of property line on the subject site or as approved through the site plan process. The protective buffer shall also contain grass, ground cover or shrubs and shall be irrigated to facilitate maintenance of landscaped areas. No impervious surfaces such as concrete or asphalt shall be placed in the protective buffer.

(c) Minimum landscape requirements for each curbed island shall include one one and one-half inch diameter at four feet above grade caliper deciduous tree, all of which must be of "quality" types as listed in division (D)(4)(b) above. The curbed island shall also contain grass, ground cover or shrubs and shall be irrigated to facilitate maintenance of landscaped areas. No impervious surfaces such as concrete or asphalt shall be placed in the curbed island.

(d) When tree removal occurs, replacement trees shall constitute at least 30% of the total amount of the caliper inches of "quality trees" removed.

(e) All trees shall be placed around the site to promote the most efficient and effective use of the different types of trees installed.

(f) When located adjacent to a single family or two-family use, the provisions of § 153.381 shall apply, except that for the portion adjacent to the residential properties, screening from the front building line to the rear property line and along the rear property line shall be six feet in height.

(5) *Public hearings.* The Planning Commission and the City Council shall each hold at least one public hearing on all applications for site plan approval. Notice of the public hearing shall be given not less than ten days nor more than 30 days prior to the date of the hearing by publication in the designated legal newspaper of the city. The notice shall contain the date, time and place of the hearing and a description of the application.

(6) *Denial.* The City Council may deny an application for site plan approval upon a written finding of legally sufficient reasons with a factual basis.

(7) *Lapse of residential site plan.* An approved residential site plan shall lapse and become null and void one year following the date on which the application was approved, unless prior to the expiration of one year, a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion on the subject site. A residential site plan may be extended once for a period of six months by the City Council. For any commercial use, failure to maintain the property may result in revocation of any extension.

(8) *Conditions and restrictions.* The Planning Commission may recommend and the City Council may impose conditions and restrictions as deemed necessary to protect the public interest and to secure compliance with the requirements of this chapter. The conditions may include the execution and submission of a development agreement with a supporting financial guarantee that the subject property will be constructed, developed and maintained in conformance with the plans, specifications and standards.

(Ord. 00-06, passed - -; Ord. 01-06, passed - -; Ord. 04-12, passed - -; Ord. 04-13, passed - -; Ord. 05-04, passed - -; Ord. 05-05, passed - -; Ord. 06-13, passed - -; Ord. 07-07, passed - -; Ord. 08-14, passed - -; Ord. 12-30, passed - -; Ord. passed 10-11-1963)

§ 153.032 SITE PLAN APPROVAL PROCEDURE AND DESIGN REQUESTS IN COMMERCIAL AND INDUSTRIAL DISTRICTS.

(A) *Generally; approval required.*

(1) *Approval required.* It is declared to be the policy of the city to preserve and promote attractive and stable business environments for its citizens through encouraging well conceived, high quality developments. To this end, imaginative site design concepts shall be employed in the development and redevelopment of respective sites. The following provisions shall apply to the site and building plan approval process, if it is related to the scope of the proposed construction. This provision applies to all properties in commercial, industrial and planned development districts that involves:

(a) Construction of a new building;

(b) Construction or reconstruction resulting in the enlargement of an existing building or any modification to the existing footprint or structural height of an existing building;

(c) Construction or reconstruction involving modification or replacement of the exterior materials on the building; or

(d) Construction or reconstruction involving modification or enlargement of the parking area.

(2) *Exceptions.* Notwithstanding the provision of division (A)(1) above, the following shall not require site plan approval:

(a) Any conformity, including the lawful use of or occupation of land or premises may be enlarged by less than 10% of its gross floor area, or 10,000 square feet, whichever is less, provided that:

1. There is no variance involved; and

2. The Community Development Department has conducted administrative review. If the site includes any nonconformity, including the lawful use or occupation of land or premises then, regardless of the size of the enlargement, a variance is necessary.

(b) Modification of existing exterior materials on the building that does not alter more than 25% of the building, provided that:

1. The modification complies with the construction design requirements of this chapter; and

2. The Community Development Department has conducted administrative review.

(c) Replacement of exterior materials on the building with same or similar materials in an attempt to retain the existing look of the building, provided that the Community Development Department has conducted administrative review.

(d) Any conformity, including the lawful use of or occupation of land or premises may enlarge its total parking area by less than 10%, provided that:

1. There is no variance involved; and

2. The Community Development Department has conducted administrative review.

(e) If the site includes any nonconformity, including the lawful use or occupation of land or premises then, regardless of the size of the enlargement, a variance is necessary.

(3) *Other provisions.* The following provisions shall govern the site and building plan approval process, as they relate to the scope of the proposed construction.

(B) *Application.*

(1) Prior to commencing any construction, a "site and building plan approval" application shall be initiated by the owner of subject property or by an authorized agent. The applicant shall submit a "site and building plan approval" application to the Zoning Administrator, copies of which are available at the municipal offices, together with a fee in an amount established by City Council resolution. A completed application shall be filed at least 25 days prior to the next regular meeting of the Planning Commission.

(2) The Zoning Administrator shall refer the matter to the Planning Commission by placing the application upon the agenda of the Commission's next regular meeting.

(C) *Exhibits.* In addition to the application, the following exhibits shall be required:

(1) A survey drawing by a registered engineer or land surveyor showing an inventory of all existing trees six-inch caliper and larger by species and size.

(a) Trees shall be identified on the drawing as quality or non-quality type trees.

(b) Quality trees shall be those types as stated in division (E)(2) below.

(c) The drawing will be accurately dimensioned survey drawing by a registered engineer or land surveyor showing pertinent existing conditions, accurately dimensioned.

(2) A complete set of preliminary drawings prepared by a registered civil engineer or landscape architect showing:

(a) An accurately scaled and dimensioned site plan indicating parking layout, including access provisions, location of structures, building elevations, landscaping, including trees and shrubbery with indication of species, planting, size and location;

(b) Fences, walls or other screening, including height and type of material;

(c) Lighting provisions, including type and location; and

(d) Curbs.

(3) Other documents as requested by the Zoning Administrator.

(D) *Drive aisle, building, parking and curbing standards.* Except for auto-related uses in § 153.382, all drive aisle, building, parking and curbing standards are as follows.

- (1) All parking lots shall be curbed with B-6-12 concrete curbing.
- (2) An equivalent of one curbed island at least eight feet by 20 feet in size must be placed at the end of every 20 parking spaces.
- (3) In the B-1 and B-2 Zoning Districts, off-street parking, building and drive aisle setback standards are as follows:

<i>B-1, B-2</i>	<i>Building</i>	<i>Parking</i>
Front yard	10 to 40 feet	Not permitted
Rear yard	20 feet minimum	10 feet minimum
Side yard	0 feet	0 feet
Side adjacent to "R"	10 feet minimum	10 feet minimum
Side adjacent to street	*10 to 30 feet	*10 feet minimum
*On corner lots, traffic sight lines must be preserved and maintained to ensure safety. Buildings and parking lots must not be constructed within "sight triangles." A <i>SIGHT TRIANGLE</i> is defined as that portion of a corner lot being within a triangle, the apex of which is the intersecting point of the two street right-of-way lines, extended 25 feet from the apex along each right-of-way line. At driveway entrances, site obstructions will be reviewed for safety as part of the site plan review process.		

(4) In the B-3, B-5, B-6 Zoning Districts, off-street parking, building and drive aisle setback standards are as follows:

<i>B-3, B-5, B-6</i>	<i>Building</i>	<i>Parking</i>
Front yard	10 to 40 feet	Not permitted
Rear yard	20 feet minimum	10 feet minimum
Side yard	0 feet	0 feet
Side adjacent to "R"	10 feet minimum	10 feet minimum
Side adjacent to street	*10 to 30 feet	*10 feet minimum
*On corner lots, traffic sight lines must be preserved and maintained to ensure safety. Buildings and parking lots must not be constructed within "sight triangles." A <i>SIGHT TRIANGLE</i> is defined as that portion of a corner lot being within a triangle, the apex of which is the intersecting point of the two street right-of-way lines, extended 25 feet from the apex along each right-of-way line. At driveway entrances, site obstructions will be reviewed for safety as part of the site plan review process.		

(5) In the B-4, I-1, I-2 Zoning Districts, off-street parking, building and drive aisle setback standards are as follows:

<i>B-4, I-1, I-2</i>	<i>Building</i>	<i>Parking</i>
Front yard	20 to 90 feet	10 feet minimum
Rear yard	20 feet minimum	10 feet minimum
Side yard	10 feet minimum	0 feet
Side adjacent to "R"	20 feet minimum	10 feet minimum
Side adjacent to street	20 feet minimum	20 feet minimum

(6) Parking located in a front, side or rear yard must provide a wall, railing or fence that physically prohibits vehicles from extending over the property line

(E) *Landscape, lighting and sign standards.* Unless modified as part of a site and building plan approval process, the following requirements apply.

(1) The setback area shall be utilized as a protective buffer. The protective buffer shall not be used for parking, drive aisles, off-street loading or storage and shall be landscaped up to the building.

(2) Minimum landscape requirements in the protective buffer shall include the following "quality type trees," one two and one-half inch diameter at four feet above grade caliper deciduous tree, which shall be hardwood type trees such as maple, seedless green ash, locust or basswood, or six-foot conifer type trees, such as Colorado blue spruce, white pine, red pine or pyramidal arborvitae, or other approve types. The number of trees required is the equivalent of one for every 20 feet of lineal property line on the subject site or as approved through the site plan process. The protective buffer shall also contain grass, ground cover or shrubs and shall be irrigated to facilitate maintenance of landscaped areas. No impervious surfaces such as concrete or asphalt shall be placed in the protective buffer.

(3) Minimum landscape requirements for each curbed island shall include one two and one-half inch diameter at four feet above grade caliper deciduous tree all of which must be of "quality" types as listed in division (E)(2) above. The curbed island shall also contain grass, ground cover, mulch or shrubs and shall be irrigated by an underground irrigation system to facilitate maintenance of landscaped areas. No impervious surfaces such as concrete or asphalt shall be placed in the curbed island.

(4) When a commercial or industrial development is located adjacent to or across from any "R" use, screening must comply with § 153.381, except that for the portion adjacent to the residential properties, screening from the front building line to the rear property line and along the rear property line shall be six feet in height. Required screening will be at least 95% opaque throughout the year. One or a combination of the following will satisfy the required screening:

- (a) A decorative fence;
- (b) A masonry wall; and/or
- (c) Landscaping.

(5) Lighting levels must not exceed zero foot-candles at the abutting property line. No direct glare may extend onto the public street, public open space or neighboring properties.

(6) Regardless of the scope of the proposed construction, all signs must comply with the provisions of §§ 153.430 through 153.438 and §§ 150.105 through 150.110.

(7) When tree removal occurs, replacement trees shall constitute at least 30% of the total amount of the caliper inches of "quality trees" removed.

(8) All trees shall be placed around the site to promote the most efficient and effective use of the different types of trees installed.

(F) *Construction design requirements.*

(1) *Exterior building materials.* Exterior building materials are classified as primary or secondary. Primary materials must comprise at least 60% of the building facade. Secondary materials must comprise no more than 40% of the building facade.

(a) *Primary materials in the B-1, B-2, B-3, B-5 and B-6 Zoning Districts.* Primary exterior building materials in the B-1, B-

2, B-3, B-5 and B-6 Districts include brick, stone, stucco or glass. Materials must be colored only by means of a pigment integral to the material, not applied to the surface.

(b) *Primary materials in the B-4, I-1 and I-2 Zoning Districts.* Primary exterior building materials in the B-4, I-1 and I-2 Districts include brick, stone, stucco or glass, concrete masonry units (CMU) which are textured, burnished or decorative. Materials must be colored only by means of a pigment integral to the material, not applied to the surface.

(c) *Secondary materials in the B-1, B-2, B-3, B-5 and B-6 Zoning Districts.* Secondary exterior building materials in the B-1, B-2, B-3, B-5 and B-6 Districts include, textured, burnished or decorative integrally colored block, or synthetic stucco above eight feet. Materials must be colored only by means of a pigment integral to the material, not applied to the surface. Other secondary exterior building materials include wood or metal. Any metal surface must be coated or anodized with a non-reflective glare-free finish.

(d) *Secondary materials in the B-4, I-1 and I-2 Zoning Districts.* Secondary exterior building materials in the B-4, I-1 and I-2 Districts include synthetic stucco above eight feet, wood or metal. Any metal surface must be coated or anodized with a non-reflective glare-free finish.

(2) In the B-1, B-2, B-3, B-4, B-5 and B-6 Districts, all exterior vertical surfaces must be treated as a front and be equally attractive on all sides of the structure.

(3) Window coverage in B-1, B-2, B-3, B-5 and B-6 Zoning Districts, buildings containing office and retail uses must maintain at least 40% window coverage on each first floor front that faces a street, parking lot or open space.

(4) Building facades in B-1, B-2, B-3, B-4, B-5 and B-6 Zoning Districts, all exterior building walls adjacent to a street, parking lot or open space must not exceed 60 feet in length without visual relief of two or more of the following:

- (a) The facade is divided architecturally with different materials or textures;
- (b) There are horizontal offsets of at least two feet in depth;
- (c) There are vertical offsets in the roof line of at least two feet; and
- (d) The windows on the first floor are recessed horizontally at least one foot.

(5) *Mechanical protrusions.*

(a) All mechanical protrusions visible to the exterior will be screened so they are not visually obvious and are compatible with the surrounding development.

(b) Satisfaction of this requirement will be demonstrated by the screening of the equipment in such a manner so that it is not visible from a point six feet above any common property line or street right-of-way.

(c) Screening will consist of either a parapet wall along the roofs edge or by an opaque screen constructed of the same material as the building's primary vertically exposed exterior finish.

(d) The Zoning Administrator may determine that screening of the equipment may be satisfied by painting, which is compatible with the development or design of the building or that the equipment by designing the equipment to be compatible with the architectural treatment of the building.

(e) All mechanical protrusions shall be highlighted on the Site and Building Plan.

(6) *Trash enclosures.*

- (a) Trash enclosures may not be located in the front or side yard adjacent to a street.
- (b) All trash areas that are visible from any public right-of-way will be screened on all sides.
- (c) Trash must not exceed the height of the screening.

(d) Required screening will be at least 95% opaque throughout the year, unless otherwise specified. Screening will be designed to be compatible with the architectural treatment of the principal building. All screening is subject to the regulations of § 153.381 governing fences.

(e) One or a combination of the following will satisfy the required screening:

1. A decorative fence;
2. A masonry wall; and
3. A hedge.

(G) *Public hearings.* The Planning Commission and the City Council shall each hold at least one public hearing on all applications for site and building plan approval. Notice of the public hearing shall be given not less than ten days nor more than 30 days prior to the date of the hearing by publication in the designated legal newspaper of the city. The notice shall contain the date, time and place of the hearing and a description of the application.

(H) *Denial.* The City Council may deny an application for site and building plan approval upon a written finding of legally sufficient reasons with a factual basis.

(I) *Lapse of commercial and industrial site plan.* An approved commercial or industrial site plan shall lapse and become null and void one year following the date on which the application was approved, unless prior to the expiration of one year, the Building Official issues a building permit and construction is commenced toward completion on the subject site. A commercial or industrial site plan may be extended once for a period of six months by the City Council. For any commercial use, failure to maintain the property may result in revocation of any extension.

(J) *Conditions and restrictions.*

(1) The Planning Commission may recommend and the City Council may impose conditions and restrictions as deemed necessary to protect the public interest and to secure compliance with the requirements of the ordinance.

(2) The conditions may include the execution and submission of a development agreement with a supporting financial guarantee that the subject property will be constructed, developed and maintained in conformance with the plans, specifications and standards.

(Ord. 12-4, passed - -; Ord. 12-30, passed - -; Ord. passed 10-11-1963)

§ 153.033 FILING WITH COUNTY RECORDER.

A certified copy of every ordinance, resolution, map, regulation adopted or variance granted under the provisions of this chapter shall be filed with the County Recorder.

(Ord. passed 10-11-1963)

§ 153.034 FEES.

(A) *Generally.* The fees to be paid for each zoning application shall be as prescribed by the City Council in § 34.03. Fees shall be payable at the time applications are filed with the Zoning Administrator and are not refundable unless application is withdrawn prior to legal publication and notice. There shall be no fee in the case of applications filed in the public interest by City Council or by the Planning Commission. Fees shall include application fees, filing fees, consultant, legal, planning and engineering fees.

(B) *Escrow payment.* All reasonable expenses and fees in excess of the deposit, shall be paid by the applicant to the city within 30 days of final action on the matter by the city. If not paid within 30 days, the account shall be deemed delinquent. If the fees and expenses incurred by the city from any consultant and Attorney are less than the amount on deposit, the excess shall be returned to the applicant following final action by the city in the matter.

(C) *Application agreement.* The application shall contain a provision wherein the applicant agrees to pay all reasonable fees and expenses incurred by the city from the city's consultants' investigation, report and recommendation, concerning the land use matter.

R-1A ONE-FAMILY RESIDENTIAL DISTRICT

§ 153.050 PERMITTED USES.

Within any "R-1A" One-Family Residential District, no structure or land shall be used except for one or more of the following uses:

- (A) One-family detached dwellings;
- (B) Public parks and playgrounds;
- (C) Public and parochial schools with the following conditions:
 - (1) No school building shall be located within 50 feet of any lot line of an abutting lot in an R District; and
 - (2) Where a school has an open play area abutting a street, a fence shall be erected 15 feet or more from the street right-of-way.
- (D) Churches, including those related structures located on the same site which are an integral part of the church property, such as convents or homes for persons related to a religious function on the same site with the following conditions:
 - (1) No church building shall be located within 50 feet of any lot line of an abutting lot in an R District; and
 - (2) No more than ten persons shall reside on the site.
- (E) Municipal buildings and structures including storage of maintenance equipment and trucks. No building shall be located within 50 feet of any lot line of an abutting lot in an R District;
- (F) A state licensed residential care facility or a housing with services establishment registered under Minn. Stat. Ch. 144D serving six or fewer persons, a licensed day care center serving 12 or fewer persons, or a group family day care facility licensed under Minn. Rules 9502.0315 to 9502.0445, to serve 14 or fewer children;
- (G) Radio and television antennas, subject to the provisions in § 153.395;
- (H) Satellite dish antennas less than one meter (39 inches) in diameter;
- (I) Those uses as permitted and regulated in § 153.006; and/or
- (J) Farmers market for the sale of agricultural and horticultural products.

(Ord. 08-09, passed - -; Ord. 08-17, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.051 CONDITIONAL USES.

Within any R-1A One-Family Residential District, no structure or land shall be used for the following uses, except by conditional use permit:

- (A) Golf courses, country clubs, tennis clubs, public swimming pools serving more than one family. The principal structure for any of the above listed uses shall be 100 feet or more from any abutting lot in an R District, and accessory structure shall be a minimum of 50 feet from any lot line;
- (B) Essential service structures, including, but not limited to, buildings, such as telephone exchange stations, booster or pressure regulating stations, wells and pumping stations, elevated tanks, lift stations and electrical power substation provided no building shall be located within 50 feet from any lot line of
 an abutting lot in an R District. Prior to granting the permit it shall be found that the architectural design of essential service structures is compatible to the neighborhood in which it is to be located and thus will promote the general welfare;
- (C) Commercial greenhouses provided all outside storage is fenced in such a manner so as to screen the stored material from view when observed from the public street or an adjoining lot;
- (D) Nursing homes, retirement homes, and other similar state licensed residential care uses.
 - (1) For nursing homes the site shall contain not less than 1,000 square feet of lot area for each person to be accommodated and buildings for uses described in this division are 50 feet or more from a lot line of an abutting lot in an R-1, R-2 or R-3 District.
 - (2) For retirement homes, and other similar state licensed residential care uses, the site shall contain not less than 3,500 square feet of lot area per dwelling unit. Parking facilities shall be equal to one space for each dwelling unit and proof of the availability of one additional space per unit.
 - (3) All parking for facilities in this section shall comply with §§ 153.345 et seq.

(E) A state licensed child day care facility serving 13 or more provided that the conditional use be in structures at least 50 feet of any lot line of an abutting lot in an R District and that a fence be erected 15 feet or more from any street right-of-way where the intended use is for open play;

(F) Off-street parking when the proposed site of the off-street parking abuts on a lot which is in the B or I District and is in the same ownership as the land in the B or I District and subject to those conditions set forth in §§ 153.345 et seq., and other conditions as found necessary by the City Council to carry out the intent of this chapter;

(G) School buildings which are a part of the physical system of the school district but which are considered temporarily in surplus may be used as research centers, offices not directly serving the public or for some form of educational activity provided:

- (1) The off-street parking requirements are met; and
- (2) The work day of the use falls between 7:00 a.m. and 7:00 p.m.

(H) Commercial buildings which have previously been classified and certified as nonconforming uses at the time of the effective date of this chapter may be used as the same nonconforming or less intense use provided:

- (1) The off-street parking requirements for the use are met;
- (2) The hours of operation of the use shall be determined by the City Council;
- (3) The structure is significant to the neighborhood and its continued active use will not be detrimental to the value of quiet enjoyment or surrounding residential properties; and
- (4) The use would be normally allowed as a permitted use in the B-2 Neighborhood Business District.

(I) Satellite dish antennas greater than one meter (39 inches) in diameter. See § 153.396.

(J) Bed and breakfast residence.

(K) Elderly community education center, provided that it is located in a building that contains a civic or community center or a multifamily elderly residential housing facility.

(L) School with more than four accessory buildings or structures.

(M) On-site residential housing for an educational facility operating in conjunction with a permitted principal use, provided:

- (1) Housing structures are limited to three stories in height;
- (2) The number of on-site residents is limited to 200; and
- (3) Housing structures must meet the building setback requirements from adjacent property lines as outlined in § 153.128.

(N) Columbaria, provided they are located on the same property as an existing church and located a minimum of 50 feet from any property line.

(Ord. 03-04, passed - -; Ord. 08-09, passed - -; Ord. 09-02, passed - -; Ord. 11-10, passed - -; Ord. passed 10-11-1963; Ord. 14-05, passed 9-8-2014; Ord. 16-12, passed 11-14-2016)

§ 153.052 PERMITTED ACCESSORY USES.

Within any R-1A One-Family Use District, the following uses shall be permitted accessory uses:

- (A) Private garages and parking spaces;
- (B) Private swimming pool and tennis court;
- (C) Home occupations as defined herein, provided that:
 - (1) Only persons residing in the dwelling shall be engaged in the occupation;
 - (2) The occupation shall be conducted entirely within the principal structure;
 - (3) Evidence of the occupation shall not be visible from the street;

- (4) No stock or warehousing for the occupation shall be stored on the premises;
 - (5) Over-the-counter retail sales are not involved;
 - (6) There shall be no more than three parking spaces for the occupant and visitors;
 - (7) No accessory building or attached garage shall be used for the home occupation; and
 - (8) Property cannot be used as a meeting location for employees.
- (D) Signs as regulated by §§ 153.430 et seq. and by §§ 150.105 et seq.;
- (E) Temporary buildings located for purposes of construction on the premises for a period not to exceed time necessary for the construction;
- (F) Gardening and other horticultural uses where no sale of products is conducted on the premises;
- (G) Decorative landscape features;
- (H) The keeping of domestic animals for noncommercial purposes for use of the occupants of the premises, provided that any accessory building used for housing the animals shall be located not less than 30 feet from the nearest residence, and provided further that the keeping of the animals shall be subject to requirements of the city code; and
- (I) Storage buildings subject to § 153.380.
- (Ord. 04-15, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.053 LOT AREA, HEIGHTS, LOT WIDTH, YARD AND OTHER REQUIREMENTS.

- (A) No structure or building shall exceed 30 feet in height as defined in § 153.004 "Building Height," except as provided in § 153.009.
- (B) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter.

<i>Lot Area</i>	
Corner lot	9,100 square feet
Interior lot	7,000 square feet

Lot Width	
Corner lot	65 feet
Interior lot	50 feet

Yard, Building Setback	
Front	30 feet
Rear	30 feet or 20% of average lot depth, whichever is greater
Side	5 feet adjacent to another lot
	20 feet adjacent to street

- (C) (1) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal

lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator.

(2) Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheet metal and corrugated metal.

(Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

R-1B ONE-FAMILY RESIDENTIAL DISTRICT

§ 153.065 PERMITTED USES.

Within the R-1B One-Family Residential District, no land or structure shall be used except for one or more of the following uses: any permitted use regulated in the R-1A District, § 153.050.

(Ord. 99-03, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.066 CONDITIONAL USES.

Within any R-1B One-Family Residential District, no structure or land shall be used for the following uses except by conditional use permit: any conditional use regulated in the R-1A District, § 153.051.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.067 PERMITTED ACCESSORY USES.

Within any R-1B One-Family Use District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the R-1A District, § 153.052.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.068 LOT AREA, HEIGHT, LOT WIDTH, YARD AND OTHER REQUIREMENTS.

- (A) No structure or building shall exceed 30 feet in height as defined in § 153.004, "Building Height," except as provided in § 153.009.
- (B) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

Lot Area	
Corner lot	12,500 square feet
Interior lot	10,000 square feet

Lot Width	
Corner lot	90 feet
Interior lot	75 feet

Yard, Building Setback

Front	30 feet
Rear	30 feet or 20% of average lot depth, whichever is greater
Side	9 feet one side/6 feet one side
	20 feet adjacent to street

(C) (1) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator.

(2) Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheet metal and corrugated metal.

(Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

R-1C ONE-FAMILY RESIDENTIAL DISTRICT

§ 153.080 PERMITTED USES.

Within the R-1C One-Family Residential District, no land or structure shall be used except for one or more of the following uses: any permitted use regulated in the R-1A District, § 153.050.

(Ord. 99-03, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.081 CONDITIONAL USES.

Within any R-1C One-Family Residential District, no structure or land shall be used for the following uses except by conditional use permit: any conditional use regulated in the R-1A District, § 153.051.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.082 PERMITTED ACCESSORY USES.

Within any R-1C One-Family Residential District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the R-1A District, § 153.052.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.083 LOT AREA, HEIGHT, LOT WIDTH, YARD AND OTHER REQUIREMENTS.

(A) No structure or building shall exceed 30 feet in height as defined in § 153.004 "Building Height," except as provided in § 153.009 of this chapter.

(B) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

<i>Lot Area*</i>	
Corner lot	15,000 square feet
Interior lot	15,000 square feet
*A 10% deviation in lot width and/or area may be permitted provided the average lot	

area for each plat or subdivision shall not be less than 15,000 square feet, and the average lot width not less than 100 feet

<i>Lot Width*</i>	
Corner lot	100 feet
Interior lot	100 feet
*A 10% deviation in lot width and/or area may be permitted provided the average lot area for each plat or subdivision shall not be less than 15,000 square feet, and the average lot width not less than 100 feet	

Yard, Building Setback	
Front	30 feet
Rear	30 feet or 20% of average lot depth, whichever is greater
Side	10 feet adjacent to another lot
	30 feet adjacent to street

(C) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator. Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheetmetal and corrugated metal.

(Ord. 09-18, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

R-2 TWO-FAMILY RESIDENTIAL DISTRICT

§ 153.095 PERMITTED USES.

Within the R-2 Two-Family Residential District, no structure or land shall be used, except for one or more of the following uses:

- (A) Any permitted use regulated in the R-1A District, § 153.050; and/or
- (B) Two-family dwelling.

(Ord. 99-03, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.096 CONDITIONAL USES.

Within any R-2 Two-Family Residential District, no structure or land shall be used for the following uses except by conditional use permit: Any conditional use regulated in the R-1A District, § 153.051.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.097 PERMITTED ACCESSORY USES.

Within the R-2 Two-Family Residential District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the R-1A District, § 153.052.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.098 LOT AREA, HEIGHT, LOT WIDTH, YARD AND OTHER REQUIREMENTS.

(A) No structure or building shall exceed 30 feet in height as defined in § 153.004 "Building Height," except as provided in § 153.009 of this chapter.

(B) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

- (1) Lot area: 15,000 square feet;
- (2) Lot width:
 - (a) Yard, building setback: 100 feet;
 - (b) Front: 30 feet;
 - (c) Side: ten feet adjacent to another lot, 20 feet adjacent to street; and
 - (d) Rear: 30 feet or 20% of average lot depth, whichever is greater.
- (3) Lot area per dwelling unit: 7,500 square feet.

(C) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator. Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheet metal and corrugated metal.

(Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

R-3 TOWNHOUSE, 3-8 UNIT RESIDENTIAL DISTRICT

§ 153.110 PERMITTED USES.

Within any R-3, Townhouse Residential District, no structure or land shall be used except for of the following uses:

- (A) Structures housing three to eight dwelling units; and
- (B) Farmers market for the sale of agricultural and horticultural products.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.111 CONDITIONAL USES.

Within the R-3, Townhouse Residential District, no structure or land shall be used for the following uses except by conditional use permit:

- (A) Any conditional use regulated in the R-1A District, § 153.051;
- (B) Multiple dwelling structures containing more than eight dwelling units;
- (C) Two-family dwellings subject to lot and yard requirements of the R-2 District, § 153.098; or
- (D) State licensed residential care facility serving seven through 16 persons or a licensed day care facility serving 13 through 16 persons.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.112 PERMITTED ACCESSORY USES.

Within the R-3, Townhouse Residential District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the R-1A District, § 153.052.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.113 LOT AREA, HEIGHT, LOT WIDTH AND YARD REQUIREMENTS.

(A) No limit shall be placed on height of buildings in this R-3 Zone, except that buildings over 35 feet shall have front, side and rear yards not less than one-half of the height of the building.

(B) The following minimum requirements shall be observed subject to additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

(1) Lot area per dwelling unit: 5,500 square feet;

(2) Lot width: 100 feet;

(3) Yard, building setback:

(a) Front: 30 feet;

(b) Side: ten feet adjacent to another lot, 20 feet adjacent to street, except where the lot in question abuts any R-1 District where the side yard setback shall conform to the established setback or 30 feet, whichever is greater; and

(c) Rear: 30 feet or 20% of average lot depth, whichever is greater.

(4) Distance between principal structures: 30 feet.

(C) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator. Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheet metal and corrugated metal.

(Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.114 PROHIBITED USES.

Within the R-3, Townhouse, three to eight unit Residential District, the following uses are prohibited: housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

R-4 MULTIPLE-FAMILY 3-16 UNIT RESIDENTIAL DISTRICT

§ 153.125 PERMITTED USES.

Within the R-4 Multiple-Family District, no structure or land shall be used except for the following use:

(A) Structures housing three to 16 multiple-family dwelling units; and

(B) Farmers market for the sale of agricultural and horticultural products.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.126 CONDITIONAL USES.

Within the R-4, Multiple-Family District, no structure or land shall be used for the following uses except by conditional use permit:

- (A) Any conditional use regulated in the R-1A District by § 153.051;
 - (B) Structure or structures over three stories in height or where ceilings of any dwelling unit are more than 31 feet above average grade;
 - (C) Two-family dwellings;
 - (D) Structure or structures containing more than 16 dwelling units;
 - (E) A state licensed residential care facility serving seven through 16 persons or licensed day care facility serving from 13 through 16 persons;
 - (F) Private clubs and lodges provided buildings are not less than 30 feet from a lot line of an abutting lot in an R District;
 - (G) Private swimming pools intended for and used solely by the occupants of the property in which it is located and their guests, provided the water surface of the pool is located not less than 15 feet from any lot line, that the pump and filter installed be not less than 25 feet from any lot line and that the pool area be so fenced as to prevent uncontrolled access from the street or from adjacent property;
 - (H) Nursing homes, retirement homes;
 - (I) Hospitals provided the site shall contain not less than 800 square feet of lot area for each person to be accommodated, and provided the lot line is 50 feet or more from a lot line of an R-1, R-2 or R-3 District; or
 - (J) Community centers as part of a multiple-family complex, provided the community center is located within setbacks no less than any other structure permitted in the district; does not exceed the height or size of the principal buildings(s); and shall be subject to the parking standards as set forth in §§ 153.345 et seq. For purposes of this division (J), of the term **COMMUNITY CENTERS** shall include meeting space, offices, bathrooms, indoor pool, indoor recreational space, limited kitchen facilities and related storage.
- (Ord. 99-03, passed - -; Ord. 08-09, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.127 PERMITTED ACCESSORY USES.

Within the R-4 Multiple-Family District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the R-1A District, § 153.052.

(Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.128 LOT AREA, HEIGHT, LOT WIDTH AND YARD REQUIREMENTS.

(A) The following minimum requirements shall be observed subject to additional requirements, exceptions and modifications as set forth elsewhere in this chapter. Minimum requirements for three or more dwelling units:

- (1) Lot area per dwelling unit: 3,500. For dwelling units with more than two bedrooms, an additional 1,750 square feet is required;
 - (2) Lot width: 200 feet;
 - (3) Yard, building setback:
 - (a) Front: 50 feet, plus one foot per foot of building height over 50 feet;
 - (b) Side: 40 feet, plus one-half foot per foot of building height over 50 feet; and
 - (c) Rear: 40 feet, plus one-half foot per foot of building height over 50 feet.
 - (4) Distance between principal structures: 50 feet.
- (B) Building height: no maximum height for buildings with three or more units.
- (C) Storage space requirement: a minimum of 96 cubic feet of miscellaneous storage space shall be provided for each dwelling

within the principal structure containing the unit. The space shall be in addition to normal storage space provided in wardrobes, cabinets and closets or linen closets.

(D) (1) Exterior walls of all principal structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator.

(2) Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper, insulation, sheet metal and corrugated metal.

(Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 16-12, passed 11-14-2016)

§ 153.129 PROHIBITED USES.

Within the R-4, Multiple Family three to 16 unit Residential District, the following uses are prohibited: housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

B-1 LIMITED BUSINESS DISTRICT

§ 153.140 PERMITTED USES.

Within the B-1 Limited Business District, no structure or land shall be used, except for one or more of the following uses, or uses deemed similar by the City Council:

(A) Art studio;

(B) Barbershop;

(C) Hair salon;

(D) A licensed child care facility;

(E) Municipal buildings where the use conducted is customarily considered to be an office use;

(F) Offices of a general nature, other than medical or dental, where the employment within the building does not exceed 50 persons and the operations do not include retail sales or warehousing from the site;

(G) Photographic studio; and/or

(H) Satellite dish antennas greater than one meter (39 inches) in diameter. See § 153.396.

(Ord. 99-03, passed - -; Ord. 01-10, passed - -; Ord. 07-08, passed - -; Ord. 08-09, passed - -; Ord. passed 10-11-1963)

§ 153.141 CONDITIONAL USES.

Within the B-1 Limited Business District, no structure or land shall be used for the following uses, except by conditional use permit:

(A) Interior decorating studio and music studio provided no retail sales are made of products unless the products are manufactured on the site;

(B) Essential service structures, including, but not limited to, buildings such as telephone exchange station, booster or pressure stations, elevated tanks, lift stations and electric power sub-stations;

(C) Historical buildings, museums, art institutes, galleries and playhouses/theaters;

(D) Nursing homes or retirement homes, provided the site shall contain not less than 600 square feet of lot area for each person to be accommodated and that no building be located less than 30 feet from the side lot line;

(E) Off-street parking, when the principal site of the off-street parking abuts on a lot which is in another B or I District, is in the same ownership as the land in the B or I District, is subject to those conditions as set forth in §§ 153.345 through 153.351 and other conditions as found necessary by the City Council to carry out the intent of this chapter;

(F) Private garages;

(G) Radio and television stations and studios;

(H) Radio and television towers;

(I) Dental or medical office or clinic;

(J) Elderly community education center, provided that it is located in a building that contains a civic or community center or a multi-family elderly residential housing facility; or

(K) A state licensed adult day care facility, provided that the lot is located at least 200 feet from Robert Street.

(Ord. passed 10-11-1963)

§ 153.142 INTERIM USES.

Within the B-1 Limited Business District, the following uses shall be interim uses: Farmers market for the sale of agricultural and horticultural products.

§ 153.143 PERMITTED ACCESSORY USES.

Within the B-1 Limited Business District, the following uses shall be permitted accessory uses:

(A) Buildings temporarily located for purposes of construction on the premises for a period not to exceed time necessary to complete the construction;

(B) Decorative landscape features; and

(C) Signs as regulated in §§ 153.430 through 153.438 and §§ 150.105 through 150.110.

(Ord. passed 10-11-1963)

§ 153.144 LOT AREA, HEIGHT, LOT WIDTH AND YARD REQUIREMENTS.

(A) No structure or building shall exceed 25 feet in height, except as provided in § 153.009 of this chapter.

(B) Wherever a B-1 Limited Business District abuts or is across the street from an R District, a fence or compact evergreen hedge not less than 75% opaque nor less than eight feet in height, except adjacent to a street where it shall be between three and four feet in height shall be erected and maintained in the front portion of the lot or along the side or rear property line that abuts the R District.

(Ord. passed 10-11-1963)

§ 153.145 PROHIBITED USES.

Within the B-1, Limited Business District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

§ 153.155 PERMITTED USES.

Within the B-2 Neighborhood Business District, no structure or land shall be used except for one or more of the following uses, or uses deemed similar by the City Council:

(A) Any permitted use regulated in the B-1 District, § 153.140; and/or

(B) The following neighborhood retail sales and service businesses supplying commodities or performing a service primarily for residents of the surrounding neighborhood:

- (1) Antique store;
- (2) Appliance store;
- (3) Art and school supply store;
- (4) Bakery good sales and baking of goods for retail sales on premises;
- (5) Bank;
- (6) Bicycle sales and repair;
- (7) Books, new or used, office supply and stationery store;
- (8) Camera and photographic supply store;
- (9) Candy, ice cream, popcorn, nuts, frozen desserts and soft drink shop but not of the drive-in type or with a drive-through;
- (10) Clothing store;
- (11) Delicatessen and/or dairy store;
- (12) Drugstore;
- (13) Dry cleaning and laundry pick up stations including incidental pressing and repair;
- (14) Health club under 4,000 square feet;
- (15) Florist store;
- (16) Gift shop;
- (17) Grocery store;
- (18) Hardware store;
- (19) Hobby or craft store including handicraft classes not to exceed ten students;
- (20) Jewelry sales and repair store;
- (21) Laundromat of self service type;
- (22) Library;
- (23) Massage therapy services;
- (24) Meat market, but not including processing for a locker;
- (25) Music store;
- (26) Newsstand;
- (27) Paint, wallpaper sales;

- (28) Picture framing store;
- (29) Pipe and tobacco store;
- (30) Restaurant, café, tea room;
- (31) Shoe sales and repair;
- (32) Small appliance repair;
- (33) Sporting goods store;
- (34) Tailor shop;
- (35) Tanning salon;
- (36) Reflexology services; and
- (37) Spa.

(Ord. 07-08, passed - -; Ord. passed 10-11-1963)

§ 153.156 CONDITIONAL USES.

Within the B-2 Neighborhood Business District, no structure or land shall be used for the following uses, except by conditional use permit:

- (A) Any conditional use regulated in the B-1 District, § 153.141;
- (B) Accessory structures other than private garages;
- (C) Mixed use residential/commercial;
- (D) Drive-through lanes, subject to the following provisions.
 - (1) They are not permitted in a front yard or within the setback area.
 - (2) Adequate stacking distance must be provided, as determined by the city, which does not interfere with other driving areas, parking spaces or sidewalks.
 - (3) Electronic speaker devices must not be audible beyond the property line and must not be operated between 10:00 p.m. and 7:00 a.m.
 - (4) Screening of automobile headlights must be provided. Screening must be at least three feet in height and fully opaque, consisting of a wall, fence, dense vegetation, berm or grade change or similar screening as determined by the city.
 - (5) A by-pass lane must be provided, allowing autos to exit the drive-through lane from the stacking area.
- (E) Funeral homes and mortuaries;
- (F) On-sale liquor establishments;
- (G) Outdoor seating, subject to following provisions.
 - (1) Seating areas shall be shown on a seating plan, identifying the number of tables and chairs and their approximate location.
 - (2) Seating areas shall be located on private property.
 - (3) Seating areas shall not obstruct required accesses, entrances or exits.
 - (4) A minimum of a four-foot walkway shall be provided between tables.
 - (5) If the principal use abuts a residential zoning district, outdoor electronic speaker devices shall not be operated between 9:00 p.m. and 7:00 a.m. For all other zoning districts, outdoor electronic speaker devices shall not be operated between 10:00 p.m. and 7:00 a.m.

- (6) Tables and chairs shall be maintenance free furniture that enhances the appearance of the business.
 - (7) No food or beverages shall be served outside of the seating area.
 - (8) Lighting shall only illuminate the seating area. Lighting levels must not exceed zero foot-candles at the abutting property line.
 - (9) All tables and chairs shall be kept in a clean and sanitary manner. Outdoor trash receptacles shall be provided.
 - (10) For outdoor seating areas for up to eight seats:
 - (a) No tables, chairs or other furnishings shall remain in the seating area when the business is closed;
 - (b) No additional parking spaces shall be required; and
 - (c) No alcoholic beverages shall be served in the seating area, except for non-fortified wine.
 - (11) For outdoor seating areas for more than eight seats:
 - (a) The seating area shall be enclosed by approved landscaping and fencing;
 - (b) The outdoor seating area shall be entered only through the principal building. There shall be no exit gates from the outdoor seating area unless required by the Building Code;
 - (c) In addition to the required number of parking spaces pursuant to the principal use, additional parking shall be required at a ratio of one parking space for every four seats in the outdoor seating area; and
 - (d) Signage shall be posted that prohibits the consumption of alcohol outside of the seating area.
 - (H) Private lodges and clubs, country clubs or fraternal organizations;
 - (I) Veterinary establishments limited to domestic animals and conducted entirely within a building;
 - (J) Any building over 35 feet in height;
 - (K) Car washes, as regulated in § 153.382;
 - (L) Motor fuel stations, as regulated in § 153.382;
 - (M) Vehicle repair, minor, as regulated in § 153.382; and/or
 - (N) Used merchandise stores, provided all of the following conditions are met.
 - (1) Used merchandise is limited to clothing and related accessories.
 - (2) The transfer or sale of merchandise is conducted entirely inside a building.
 - (3) There is no outdoor storage of any kind.
 - (4) The floor area for the use is no greater than 2,000 square feet.
- (Ord. 99-03, passed - -; Ord. 05-03, passed - -; Ord. 06-08, passed - -; Ord. 08-02, passed - -; Ord. 10-04, passed - -; Ord. passed 10-11-1963)

§ 153.157 INTERIM USES.

Within the B-2 Neighborhood Business District, the following uses shall be interim uses: any interim use regulated in the B-1 District, § 153.142.

(Ord. 99-03, passed - -; Ord. 07-08, passed - -; Ord. passed 10-11-1963)

§ 153.158 PERMITTED ACCESSORY USES.

Within the B-2 Neighborhood Business District, the following uses shall be permitted accessory uses:

(A) Any permitted accessory use regulated in the B-1 District, § 153.143; and

(B) Any incidental repair, processing or storage necessary to conduct a permitted principal use provided the use shall not occupy more than 30% of the gross floor area of the principal building.

(Ord. 05-05, passed - -; Ord. passed 10-11-1963)

§ 153.159 SCREENING REQUIREMENTS.

Wherever a B-2 Neighborhood Business District abuts or is across the street from an R use, screening must comply with § 153.031(D)(4).

(Ord. passed 10-11-1963)

§ 153.160 PROHIBITED USES.

Within the B-2, Neighborhood Business District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

B-3 GENERAL BUSINESS DISTRICT

§ 153.170 PERMITTED USES.

Within the B-3 General Business District, no structure or land shall be used, except for one or more of the following uses, or uses deemed similar by the City Council:

(A) Any permitted use regulated in the B-2 District, § 153.155, but not limited in scale to serving residents of the surrounding area; and/or

(B) The following retail sales and service businesses:

(1) Boats and marine sales when conducted entirely within a building;

(2) Dance studio;

(3) Diaper or hand laundry services, provided not more than ten persons are employed;

(4) Furniture sales;

(5) Garden supply store, provided it is conducted entirely within an enclosed structure;

(6) Golf courses, public or private;

(7) Health club;

(8) Locksmith;

(9) Motels, motor hotels and hotels, provided the site contains not less than 600 square feet of area per unit;

(10) Newspaper and publishing office;

(11) Office buildings, other than medical or dental, with more than 50 employees who work inside the building;

(12) Optical and jewelry manufacturing provided the operation is not located within the front 60 feet of the first floor;

(13) Pet care facility provided the operation shall not include the boarding of domestic animals on the site, the maintaining of pens or cages outside of the building or the operating so as to cause an offensive odor or noise. See §§ 153.325 and 153.326;

(14) Photographic supplies and processing of film and prints;

(15) Printing shop;

(16) Radio and television repair;

(17) Rugs and floor covering sales;

(18) Seat cover, upholstery or drapery shop;

(19) Swimming pools, public;

(20) Wholesale office and showroom; and/or

(21) Music studio.

(Ord. 99-03, passed - -; Ord. passed 10-11-1963)

§ 153.171 CONDITIONAL USES.

Within the B-3 General Business District, no structure or land shall be used for the following uses, except by conditional use permit:

(A) Any conditional use regulated in the B-2 District, § 153.156, with the exception of use merchandise stores;

(B) Armories, convention halls, sport arenas and stadiums;

(C) Motor vehicle sales, as regulated in § 153.382;

(D) Bingo halls, provided that the establishment is located at least 600 feet when measured in a straight line from the building on which the establishment is located, to the property line from the following:

(1) Residentially zoned property;

(2) Agricultural land in the neighboring city, which is designated in the Comprehensive Plan for residential use;

(3) A licensed child day care facility;

(4) A public or private educational facility classified as an elementary, middle, junior high or senior high school; or

(5) A church.

(E) Bowling alleys, billiard and pool rooms, skating rinks, dance halls, batting cages and similar uses provided the structure in which the use is similar shall not be located within 100 feet of any R-1 or R-2 District;

(F) Bus terminals;

(G) Learning center, business or trade school when conducted entirely within a building;

(H) Electrical service, heating, plumbing, appliances, upholstery or air conditioning service shop, provided they do not employ more than six persons in repair or processing;

(I) Any light manufacturing process, fabrication or storage, provided all of the following conditions are met:

(1) The process is conducted entirely within a structure;

(2) The structure is no greater than 25,000 square feet in size and no more than one story;

(3) There are no more than 50 employees;

(4) The building exterior shall comply with the requirements of § 153.053 of this code;

(5) The landscaping for the site provides adequate screening;

- (6) Parking meets the requirements of the light industrial zone;
 - (7) Signage is restricted to monument signs;
 - (8) Lot size is adequate to provide building coverage of no more than 30%;
 - (9) Truck traffic is limited to hours and frequency established by the City Council; and
 - (10) Loading dock areas are thoroughly screened from surrounding property and are not visible from a public street.
- (J) Movie theaters but not the drive-in type;
- (K) Off sale liquor stores;
- (L) Outdoor display or storage of items at retail establishments such as building material yard, commercial greenhouse and mobile home sales;
- (M) Pawnshops, provided that the establishment is located at least 800 feet, when measured in a straight line from the building on which the establishment is located to the property line, from the following:
- (1) Residentially zoned property;
 - (2) Agricultural land located in the neighboring city which is designated in the Comprehensive Plan for residential use;
 - (3) A licensed child day care facility;
 - (4) A public or private educational facility classified as an elementary, middle, junior high or senior high school;
 - (5) A church; or
 - (6) A pawnshop.
- (N) Stone and monument sales;
- (O) Tattoo, body piercing or body art establishment, provided that they are located at least 800 feet, as measured in a straight line from the building on which the establishment is located to the property line, from the following:
- (1) Residentially zoned property;
 - (2) Agricultural land located in the neighboring city which is designated in the Comprehensive Plan for residential use;
 - (3) A licensed day care or day care center;
 - (4) A public or private educational facility classified as an elementary, middle, junior high or senior high school;
 - (5) A church; or
 - (6) A tattoo, body piercing or body art establishment.
- (P) Motor vehicle rentals, as regulated in § 153.382;
- (Q) A church existing as of the date of this section may be permitted a one-time expansion subject to approval of a site plan submitted pursuant to § 153.050;
- (R) Columbaria, provided they are located on the same property as an existing church and located a minimum of 30 feet from any property line.
- (Ord. 02-11, passed - -; Ord. 05-03, passed - -; Ord. passed 10-11-1963; Ord. 14-05, passed 9-8-2014)

§ 153.172 INTERIM USES.

Within the B-3 General Business District, the following uses shall be interim uses: any interim use regulated in the B-2 District, § 153.157, provided that it meets the following conditions.

- (A) The sales area shall be setback at least 300 feet from the Robert Street right-of-way and 150 feet back from any other street.

(B) The sales area shall not reduce the required supply of off street parking below the required number of spaces for the principal building and for the interim use.

(C) Off-street parking required for the sales area shall be one space per 150 square feet of sales area.

§ 153.173 PERMITTED ACCESSORY USES.

Within the B-3 General Business District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the B-2 District, in § 153.158.

(Ord. passed 10-11-1963)

§ 153.174 SCREENING REQUIREMENTS.

Wherever a B-3 General Business District abuts or is across the street from an R use, screening must comply with § 153.031(D)(4).

(Ord. passed 10-11-1963)

§ 153.175 PROHIBITED USES.

Within the B-3, General Business District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

B-4 SHOPPING CENTER DISTRICT

§ 153.185 PURPOSE.

(A) The purpose of this district is to establish provisions for the designating of a district where a multiple building retail sales and service facility with integrated design and a coordinated physical plan, which is appropriately located, can be erected.

(B) The district shall be developed as a unit according to an approved plan as provided below.

(Ord. passed 10-11-1963)

§ 153.186 APPLICATION.

(A) The owner or owners of any tract of land in the B-4 Shopping Center District comprising an area of not less than 15 acres of land or 50,000 square feet of building area may submit to the City Council a plan for the use and development of all or part of the tract meeting the requirements set forth in this section.

(B) The proposed plan shall be referred to the Planning Commission for study and report.

(C) The Planning Commission shall transmit to the City Council its findings and recommendations for consideration and action.

(Ord. 99-19, passed - -; Ord. passed 10-11-1963)

§ 153.187 PERMITTED USES.

Within the B-4 Shopping Center District, no structure or land shall be used except for one or more of the following use or uses deemed similar by the City Council:

- (A) Any permitted use regulated in the B-3 District § 153.170, but not limited in scale to serving residents of the surrounding area;
- (B) The following retail sales and service businesses:
 - (1) Department store; and/or
 - (2) Post office.
- (C) Auto accessory stores, as regulated in § 153.382.

(Ord 00-22, passed - -; Ord. passed 10-11-1963)

§ 153.188 CONDITIONAL USES.

Within the B-4 Shopping Center District, no structure or land shall be used for the following uses except by conditional use permit:

- (A) Any conditional use regulated in the B-3 District, § 153.171 with the exception of car washes, motor fuel stations, and vehicle repair, minor;
- (B) Amusement establishments;
- (C) Automatic vending devices not enclosed in a structure;
- (D) Discount stores;
- (E) Gun sales and repair;
- (F) Motels, motor hotels and hotels if the site contains less than 600 square feet of area per unit;
- (G) Newspaper and/or magazine stands;
- (H) Used merchandise stores;
- (I) Alternative financial establishments, provided all of the following conditions are met.
 - (1) The establishment is located at least 800 feet when measured in a straight line from the building in which the establishment is located, to the property line from alternative financial establishments, pawnshops, adult uses, body art establishments, bingo halls, used merchandise stores and discount stores.
 - (2) The establishment does not use bars, chains or similar security devices that are visible from the public street or sidewalk.
- (J) Learning centers, business or trade schools when conducted entirely within a building.

§ 153.189 INTERIM USES.

Within the B-4 Shopping Center District, the following uses shall be interim uses:

- (A) Any interim use regulated in the B-3 District, § 153.172, provided that it meets the conditions contained therein;
- (B) Outdoor sale of fireworks, provided that it meets the conditions outlined in § 153.172(A) and National Fire Protection Association standards, as required by the Fire Marshal;
- (C) Indoor sale of fireworks not in conjunction with an existing use, provided that it meets National Fire Protection Association standards, as required by the Fire Marshal;
- (D) Food stands, provided that they meet the conditions outlined in § 153.172(A). This section does not apply to food stands that are part of city sponsored events or events lasting three days or less; and
- (E) Outdoor display of seasonal merchandise, provided that it meets the conditions as outlined in § 153.172(A) and that items displayed are sold within the store located on the property.

§ 153.190 PERMITTED ACCESSORY USES.

Within the B-4 Shopping Center District, the following uses shall be permitted accessory uses:

(A) Any permitted accessory use regulated in the B-3 District, § 153.173; and

(B) Any incidental repair or processing necessary to conduct a permitted use shall not exceed 20% of the floor space of the principal building.

(Ord. 98-19, passed - -; Ord. 99-03, passed - -; Ord. 99-19, passed - -; Ord. 00-10, passed - -; Ord. 05-05, passed - -; Ord. passed 10-11-1963)

§ 153.191 AREA AND DESIGN REQUIREMENTS.

(A) The physical design may include more than one building; however, should the buildings provide an open space between two buildings, the space shall not be less than one-half the sum of the heights of the two buildings.

(B) At least 40% of the street frontage of any lot must be occupied by building facades meeting the setback requirements. Other portions of the building may be set back farther than the setback requirements.

(C) The design shall include adequate internal circulation drives not less than 22 feet in width which are exclusive of the required parking area.

(D) The driveway curb closest to the development shall not exceed 26 feet in width, six-foot return curb radii, and be located not less than 60 feet from all intersecting streets.

(E) The entire area shall be landscaped, occupied by buildings or structures or parking areas so treated as to control dust. Should the development be undertaken in stages, all of the area required to conform to that portion undertaken shall be developed to meet the preceding requirements.

(F) A drainage plan shall be designed and approved for the entire area with the on-site under-ground construction as determined by the city.

(G) Wherever a B-4 Shopping Center District abuts, or is across the street from an R use, screening must comply with § 153.031(D)(4).

(Ord. passed 10-11-1963)

§ 153.192 PROHIBITED USES.

Within the B-4 Shopping Center District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

B-5 GATEWAY NORTH MIXED USE DISTRICT

§ 153.205 PERMITTED USES.

(A) The following provisions shall apply.

(B) Within the B-5 Gateway North Mixed Use District, no structure or land shall be used except for one or more of the following uses, or uses deemed similar by the City Council:

(1) Antique store;

- (2) Art and school supply store;
- (3) Bakery good sales and baking of goods for retail sales on premises;
- (4) Bank without a drive-through;
- (5) Barber shop;
- (6) Bicycle sales and repair;
- (7) Books, new or used, office supply and stationery store;
- (8) Candy, ice cream, popcorn, nuts, frozen desserts and soft drink shop without a drive-through;
- (9) Clothing store, but not a used merchandise store;
- (10) Coffee shop without a drive-through;
- (11) Licensed child day care facility;
- (12) Delicatessen and/or dairy store;
- (13) Drug store;
- (14) Dry cleaning and laundry pick up, including incidental pressing and repair;
- (15) Florist shop;
- (16) Gift shop;
- (17) Grocery store;
- (18) Hair salon;
- (19) Hardware store under 4,000 square feet;
- (20) Health clubs under 4,000 square feet;
- (21) Hobby or craft store, including classes not to exceed ten students;
- (22) Jewelry sales and repair;
- (23) Library;
- (24) Locksmith;
- (25) Meat market, but not including processing;
- (26) Municipal buildings;
- (27) Music store or music studio;
- (28) Offices of a general nature, other than medical or dental, where the employment within the building does not exceed 25 persons and the operations do not include retail sales or warehousing on the site;
- (29) Optical sales and service;
- (30) Paint, wallpaper sales;
- (31) Photography studio or camera supply store;
- (32) Picture framing store;
- (33) Shoe sales and repair;
- (34) Spa;
- (35) Sporting goods store;

- (36) Studio for dance or martial arts under 4,000 square feet;
- (37) Tailor shop;
- (38) Tanning salon;
- (39) Massage therapy services;
- (40) Reflexology services;
- (41) Furniture sales;
- (42) Garden supply store within a building;
- (43) Printing shop;
- (44) Rugs/floor coverings store;
- (45) Upholstery/drapery store;
- (46) Wholesale office/showroom;
- (47) Interior decorating studio;
- (48) Appliance sales and service;
- (49) Restaurant, café, tea room without a drive-through;
- (50) Cell phone sales;
- (51) Computer sales and service; and
- (52) Video store, not including adult videos.

(Ord. 04-15, passed - -; Ord. 11-16, passed - -; Ord. passed 10-11-1963)

§ 153.206 CONDITIONAL USES.

Within the B-5, Gateway North Mixed Use District, no structure or land shall be used for the following uses, except by conditional use permit:

- (A) Accessory structures;
- (B) Private garages, provided:
 - (1) Principal use of the property is mixed-use;
 - (2) Property includes owner occupied residential unit;
 - (3) Structure meets the provisions of § 153.380. In addition metal framing and metal roofing is not allowed; and
 - (4) Carport structures must be secured to a cement slab or footing.
- (C) Funeral homes and mortuaries;
- (D) Dental or medical office or clinic;
- (E) Mixed-use residential/commercial;
- (F) Museums, art galleries, theaters;
- (G) On-sale liquor establishments;
- (H) Outdoor seating, provided it complies with the requirements of § 153.156(G);
- (I) R-3 and R-4 residential dwelling units;

(J) Veterinary establishments limited to domestic animals and conducted entirely within a building;

(K) Offices of a general nature, other than medical or dental, where the employment within the building does not exceed 50 persons and the operations do not include retail sales or warehousing on the site;

(L) Elderly community education center, provided that it is located in a building that contains a civic or community center or a multifamily elderly residential housing facility;

(M) Retirement homes, provided that the site shall contain not less than 3,500 square feet of lot area per dwelling unit.

(1) Parking facilities shall be equal to one space for each dwelling unit and proof of the availability of one additional space per unit.

(2) All parking facilities in this section shall comply with §§ 153.345 et seq.

(N) Off-street parking;

(O) Drive-through lanes, provided they meet the conditions in § 153.156(D); or

(P) Discount stores.

(Ord. 99-03, passed - -; Ord. 09-04, passed - -; Ord. 00-10, passed - -; Ord. passed 10-11-1963; Ord. 15-, passed - -2015; Ord. 15-14, passed 12-15-2015; Ord. 16-12, passed 11-14-2016)

§ 153.207 INTERIM USES.

Within the B-5 Gateway North Mixed Use District, the following uses shall be interim uses: any interim use regulated in the B 3 District, § 153.172, provided that it meets the conditions contained therein.

§ 153.208 PERMITTED ACCESSORY USES.

Within the B-5 Gateway North Mixed Use District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the B-3 District, in § 153.173.

(Ord. passed 10-11-1963)

§ 153.209 LOT AREA, HEIGHT, LOT WIDTHS AND YARD REQUIREMENTS.

(A) No structure or building shall exceed three stories above grade.

(B) For any R-4 multi-family use, housing three to 16 dwelling units, the minimum lot area, lot width, yard and building setback and distance between principal structures must comply with the lot requirements for R-4 Multiple-Family Districts, in § 153.128.

(C) For any R-2, R-3, R-4 or commercial use that is adjacent to residential use, screening must comply with § 153.031(D)(4).

(Ord. passed 10-11-1963)

§ 153.210 PROHIBITED USES.

Within the B-5 Gateway North Mixed Use District, the following uses are prohibited: housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

B-6 TOWN CENTER MIXED USE DISTRICT

§ 153.220 PERMITTED USES.

Within the B-6 Town Center Mixed Use District, no structure or land shall be used, except for one or more of the following uses, or uses deemed similar by the City Council: any permitted use regulated in the B-5 District, § 153.205.

(Ord. 12-02, passed - -; Ord. passed 10-11-1963)

§ 153.221 CONDITIONAL USES.

Within the B-6 Town Center Mixed Use District, no structure or land shall be used for the following uses except by conditional use permit:

(A) Any conditional use regulated in the B-5 District, § 153.206, with the exception of funeral homes and mortuaries, R-3 and R-4 residential dwellings and discount stores;

(B) Hotels;

(C) Sports arena or facility; and

(D) Health clubs over 4,000 square feet.

(Ord. 12-02, passed - -; Ord. passed 10-11-1963)

§ 153.222 INTERIM USES.

Within the B-6 Town Center Mixed Use District, the following uses shall be interim uses: any interim use regulated in the B-3 District, § 153.172, provided that it meets the conditions contained therein.

§ 153.223 PERMITTED ACCESSORY USES.

Within the B-6 Town Center Mixed Use District, the following uses shall be permitted accessory uses: any permitted accessory use regulated in the B-3 District, in § 153.173.

(Ord. 12-02, passed - -; Ord. passed 10-11-1963)

§ 153.224 LOT AREA, HEIGHT, LOT WIDTHS AND YARD REQUIREMENTS.

(A) No structure or building shall exceed four stories above grade.

(B) For any commercial use that is adjacent to a residential use, screening must comply with § 153.032(E)(4).

(Ord. 12-02, passed - -; Ord. passed 10-11-1963)

§ 153.225 PROHIBITED USES.

Within the B-6, Town Center Mixed Use District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

§ 153.235 PERMITTED USES.

Within the I-1 Light Industrial District, no structure or land shall be used, except for one or more of the following uses, or uses deemed similar by the City Council:

(A) Conducting a process, fabrication, storage, manufacturing or wholesaling operation or providing a service involving any of the following products, articles or uses:

- (1) Apparel;
- (2) Artificial limbs;
- (3) Automobile painting, upholstering, tire recapping and major repair when conducted within a completely enclosed building;
- (4) Bakery goods;
- (5) Batteries;
- (6) Bicycles and toys;
- (7) Boats;
- (8) Bus terminals and maintenance garage;
- (9) Cabinet shops;
- (10) Camera and photographic supplies;
- (11) Canvas products;
- (12) Ceramic products using kilns fired only by electricity or gas;
- (13) Cigarettes and tobacco products;
- (14) Clocks, watches and jewelry;
- (15) Cork and cork products;
- (16) Drugs, cosmetics, pharmaceutical and toiletries electronic products;
- (17) Engraving and printing;
- (18) Furniture;
- (19) Heating, washing, cooling, drying, cleaning appliances;
- (20) Ice, cold storage plants, bottling works;
- (21) Laundries;
- (22) Machine shops;
- (23) Musical instruments;
- (24) Office equipment;
- (25) Paper products from processed paper;
- (26) Pet care facility;
- (27) Processing of manufactured food;
- (28) Radio and television repair;
- (29) Research laboratories;
- (30) Rubber and synthetic rubber products;

- (31) Shoes, boots, footwear;
 - (32) Sporting equipment;
 - (33) Tools, hardware and small metal products; or
 - (34) Medical or dental laboratory.
 - (B) Civic center;
 - (C) Offices;
 - (D) Sports arena or facility;
 - (E) Veterinary establishments limited to domestic animals and conducted entirely within a building;
 - (F) Warehousing;
 - (G) Water softening units;
 - (H) Auto accessory stores, as regulated in § 153.382;
 - (I) Car washes, as regulated in § 153.382;
 - (J) Motor fuel stations, as regulated in § 153.382;
 - (K) Vehicle repair, major as regulated in § 153.382; or
 - (L) Vehicle repair, minor, as regulated in § 153.382.
- (Ord. 08-18, passed - -; Ord. passed 10-11-1963)

§ 153.236 CONDITIONAL USES.

Within the I-1 Light Industrial District, no structure or land shall be used for the following uses, except by conditional use permit:

- (A) Uses which are permitted under § 153.235, which could involve the storage or use of materials that explode;
- (B) Essential service structures;
- (C) Radio or television transmission towers;
- (D) Satellite dish antennas greater than one meter (39 inches) in diameter. See § 153.396;
- (E) Open storage, provided all of the following conditions are met.
 - (1) Open storage shall be accessory to the principal use conducted within a building and shall not be a principal use by itself such as junk yards or contractors' storage yards.
 - (2) Open storage shall be limited to an area not larger than 50% of the ground coverage of the principal building and shall be located behind the principal building and not in side or front yard areas and not abutting a public street.
 - (3) Open storage areas shall be surfaced with concrete or asphalt and shall be subject to the screening provisions of § 153.209(C).
 - (4) If a Residential District abuts the property, the open storage area shall be setback from the property line on the side at least 50 feet.
- (F) Accessory structures;
- (G) Motor vehicle sales or rental when display and storage is entirely within a building;
- (H) Tattoo, body piercing or body art establishment, provided they meet the conditions in § 153.171.
- (I) Pawnshops, provided they meet the conditions in § 153.171.

(J) Bingo halls, provided they meet the conditions in § 153.171(D).

(K) Pyrotechnic special effects material storage that weighs in excess of 125 pounds, which can be increased to 250 pounds, if the pyrotechnic special effects material is stored in a building that has automatic sprinklers. The weight of material shall be determined by the standards set forth by the National Fire Protection Association;

(L) Learning center, business or trade school when conducted entirely within a building;

(M) Hospitals;

(N) Chemical dependency treatment facility serving a total of up to 16 persons. The facility may not be located in a duplex or multi-family dwelling unless it occupies the entire structure. The facility shall be located at least 600 feet, when measured in a straight line from the property line in which the facility is located to the property line of the following:

(1) A licensed child day care facility;

(2) A public or private educational facility classified as an elementary, middle, junior high or senior high school; or

(3) Single-family or two-family use.

(O) Sexually-oriented establishment, as regulated by §§ 153.455 through 153.459;

(P) Dog training facility, provided all of the following conditions are met.

(1) Any such facility shall be set back at least 500 feet from residentially zoned property as measured in a straight line from the nearest edge of the outdoor training area to the property line of residentially zoned property.

(2) Outdoor training facilities shall include an enclosed building with restrooms.

(3) The outdoor area to be used for the dog training facility shall be completely enclosed with a fence that is at least four feet in height.

(4) Adequate off-street parking shall be provided, as determined by the Zoning Administrator.

(5) Outdoor areas shall be maintained in a clean and sanitary condition at all times. Solid waste material shall be removed at least daily and disposed of in a sanitary manner.

(6) Lighting shall not exceed zero foot-candles at the abutting property line.

(7) The facility shall not be operated between 10:00 p.m. and 7:00 a.m.

(8) No dogs shall remain unattended in outdoor areas.

(9) No permanent outdoor pens are allowed with the exception of a separate outdoor relief area.

(10) A maximum ratio of one person to four dogs is allowed in the outdoor areas at any given time.

(Q) Used merchandise stores; and

(R) Learning center, business or trade school when conducted entirely within a building.

(Ord. 11-08, passed - -; Ord. 12-27, passed - -; Ord. passed 10-11-1963)

§ 153.237 PERMITTED ACCESSORY USES.

(A) Signs: see §§ 153.430 through 153.438 and §§ 150.105 through 150.110.

(B) Off-street parking and loading: see §§ 153.345 through 153.351.

(C) Within the I-1 District, the following uses are permitted accessory uses:

(1) Residential structures and related residential uses necessary for security and safety reasons in relation to a principal use; and

(2) On-site residential housing owned and operated in conjunction with a permitted principal use.

(Ord. passed 10-11-1963)

§ 153.238 LOT AREA, HEIGHT, LOT WIDTHS AND YARD REQUIREMENTS.

(A) Not more than 50% of the lot area shall be occupied by buildings.

(B) No structure shall exceed 45 feet in height except as provided in § 153.009.

(C) Screening: any use in the I-1 Light Industrial District shall effectively screen any open storage from eye level vision from any abutting property line by providing a fence or 30-foot wide planting strip to screen and reduce noise, dust and vision. The fence or planting strip must comply with § 153.031(D)(4). The fence screening shall comply with the fence regulations in § 153.381.

(D) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

(1) Lot area: one acre; and

(2) Lot width: 100 feet.

(E) Whenever an I-1 Light Industrial District is across the street from an R District the front or side yard adjacent to the street shall have a minimum depth of 100 feet.

(F) Whenever an I-1 Light Industrial District abuts an R District along the side or rear lot lines that are adjacent to another lot or lots the side yards and/or rear yard depth shall be a minimum of 50 feet.

(G) Maximum building coverage in the I-1 District shall be 50%.

(Ord. 11-13, passed - -; Ord. passed 10-11-1963)

§ 153.239 PROHIBITED USES.

Within the I-1, Light Industrial District, the following uses are prohibited:

(A) State-licensed residential care facilities;

(B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

I-2 GENERAL INDUSTRIAL DISTRICT

§ 153.250 PERMITTED USES.

Within the I-2 General Industrial District, no structure or land shall be used except for one or more of the following uses, or uses deemed similar by the City Council:

(A) Any permitted use regulated in the I-1 District, § 153.235; and/or

(B) Conducting a process, fabrication, storage, manufacturing or wholesaling operation or providing a service involving any of the following products, articles or uses:

(1) Electric motors, generators, transformers and other electric components;

(2) Metal polishing and plating;

(3) Monument works;

(4) Paint manufacturing; or

- (5) Sheet metal work, ornamental iron, stamping and welding.

(Ord. passed 10-11-1963)

§ 153.251 CONDITIONAL USES.

Within the I-2 General Industrial District, no structure or land shall be used for the following uses except by conditional use permit:

- (A) Any conditional use regulated in the I-1 District, § 153.236;
- (B) Airports and truck and freight terminals;
- (C) Accessory structures;
- (D) Pyrotechnic special effects material storage that weighs in excess of 125 pounds, which can be increased to 250 pounds, if the pyrotechnic special effects material is stored in a building that has automatic sprinklers. The weight of material shall be determined by the standards set forth by the National Fire Protection Association; or
- (E) Early childhood learning centers.

(Ord. 15-01, passed 4-27-2015)

§ 153.252 PERMITTED ACCESSORY USES.

Within the I-2 Light Industrial District, the following uses are permitted accessory uses:

- (A) Off-street parking and loading. See §§ 153.345 through 153.351;
- (B) Residential structures and related residential uses necessary for security and safety reasons in relation to a principal use; and
- (C) On-site residential housing owned and operated in conjunction with a permitted principal use.

(Ord. passed 10-11-1963)

§ 153.253 LOT AREA, HEIGHT, LOT WIDTHS AND YARD REQUIREMENTS.

- (A) Not more than 50% of the lot area shall be occupied by buildings.
- (B) No structure shall exceed 45 feet in height except as provided in § 153.009.

(C) Screening: any use in the I-2 General Industrial District shall effectively screen any open storage from eye level vision from any abutting property line by providing a fence or 30-foot wide planting strip to screen and reduce noise, dust and vision. The fence or planting strip must comply with § 153.031(D)(4). The fence screening shall comply with the fence regulations in § 153.381.

(D) The following minimum required shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter:

- (1) Lot area: one acre; and
- (2) Lot width: 100 feet.

(E) Whenever an I-2 General Industrial District is across the street from an R District the front or side yard adjacent to the street shall have a minimum depth of 100 feet.

(F) Whenever an I-2 General Industrial District abuts an R District along the side or rear lot lines that are adjacent to another lot or lots, the side yards and/or rear yard depth shall be a minimum of 50 feet.

(G) Maximum building coverage in the I-2 District shall be 50%.

(H) Signs must comply with §§ 153.430 through 153.438 and §§ 150.105 through 150.110.

(Ord. 11-13, passed - -; Ord. passed 10-11-1963)

§ 153.254 PROHIBITED USES.

Within the I-2, General Industrial District, the following uses are prohibited:

- (A) State-licensed residential care facilities;
- (B) Housing with services establishments registered under Minn. Stat. Ch. 144D.

(Ord. 16-12, passed 11-14-2016)

C CONSERVANCY DISTRICT

§ 153.265 PERMITTED USES.

Within the C Conservancy District, no structure or land shall be used except for one or more of the following uses:

- (A) Nature preserve;
- (B) Horticulture, nurseries and farm crops;
- (C) Greenhouses or similar horticultural structures (historic, scenic, educational and the like);
- (D) Essential service structures, including, but not limited to, buildings such as a maple syrup building, agricultural aviary, corncribs, vegetable cellar;
- (E) Playground;
- (F) Trails and related trail structures, such as bridges, boardwalks and directional signs; or
- (G) Stands for the sale of agricultural products provided the products are raised on the premises.

(Ord. passed 10-11-1963)

§ 153.266 CONDITIONAL USES.

Within the C Conservancy District, no structure or land shall be used for the following uses, except by conditional use permit:

- (A) Environmental education center;
- (B) Educational farm;
- (C) Maintenance buildings not larger than 1,500 square feet for storage of maintenance equipment, tractors and trucks provided no building shall be located within 100 feet of any property line of abutting property;
- (D) Classroom buildings;
- (E) Office buildings of general nature where the normal employment or occupancy within the building does not exceed 25 persons and the operations are restricted to employees or volunteers of the organization;
- (F) Building and structures which exceed 45 feet in height, except as permitted in § 153.009;
- (G) Open storage of farm equipment and machinery, provided the storage shall not be within 300 feet of a public street;
- (H) Agriculture uses including barns, animal stables or other structures with such limitations established by the City Council as are consistent with a nature preserve or an educational farm;
- (I) Unsurfaced driveways and parking surfaces. Aggregate parking spaces within the district shall comply with the requirements of §§ 153.345 through 153.351. Parking setback requirements shall be consistent with the requirements in the B-2 District; or

(J) Wind turbines with a combined nameplate capacity of less than 40 kilowatts, provided the wind turbine meets the following requirements.

(1) The height of the wind turbine shall not exceed 140 feet as measured from the ground to the top of the tower, the top of the rotor, the top of the blade or the top of any other part of the wind turbine, whichever is highest.

(2) The wind turbine shall be set back from all property lines, buildings, roads, structures, pathways and rights-of-way by a distance that is equal to or greater than 1.1 times the height of the wind turbine as measured from the ground level to the top of the tower, top of the rotor, top of the blade or the top of any other part of the wind turbine, whichever is highest. This setback may be reduced to a distance agreed upon as part of the conditional use permit if the applicant furnishes a registered engineer's certification that the wind turbine is designed to collapse, fall, curl or bend within a distance or zone shorter than the height of the wind turbine.

(3) The wind turbine must be operated and maintained so that it complies with the noise pollution standards of the State Pollution Control Agency.

(4) The wind turbine must be protected against trespassing to prevent unauthorized climbing.

(5) The wind turbine must be designed and installed to withstand natural lightning strikes.

(6) The wind turbine's electrical equipment and connections must adhere to all state and federal rules, regulations and standards.

(7) The safety design of all wind turbines must be certified by the manufacturer's engineer or a certified state professional engineer.

(8) The wind turbine must be in compliance with all Federal Aviation Administration regulations, including lighting and marking regulations, and shall comply with the notification requirements of the Federal Aviation Administration.

(9) The wind turbine's blade must be a minimum of 12 feet above ground level.

(10) All wind turbines shall be designed and constructed in accordance with all applicable state and federal regulations.

(11) No more than one wind turbine may be located on any one lot.

(Ord. 07-09, passed - -; Ord. passed 10-11-1963)

§ 153.267 PERMITTED ACCESSORY USES.

Within the C Conservancy District, the following uses are permitted accessory uses:

(A) Garages, off-street parking and loading consistent with the use of the structures or facilities for which the parking is intended;

(B) Residential structures and related residential uses necessary for security and safety reasons in relation to a principal use;

(C) Storage buildings;

(D) Any incidental repair or processing necessary to conduct a permitted principal use;

(E) Temporary buildings located on the premises for purposes of construction for a period not to exceed time necessary to complete the construction;

(F) Decorative landscape features;

(G) The keeping of farm, domestic and native-to-Minnesota wild animals for educational purposes, provided that any accessory building used for housing the animals shall be located not less than 100 feet from the nearest lot line;

(H) Fences not to exceed nine feet in height and shall also meet all setback requirements;

(I) Satellite dish antennas greater than one meter (39 inches) in diameter. See § 153.396;

(J) Limited retail sales of merchandise and food consistent with principal uses;

(K) Windmill not to exceed 50 feet in height, provided the structure is located a minimum of 200 feet from the nearest lot line; and

(L) Entrance signs not exceeding 32 square feet in size at each entrance from a public roadway.

(Ord. passed 10-11-1963)

§ 153.268 LOT AREA, HEIGHT, LOT WIDTH AND YARD REQUIREMENTS.

(A) No structure or building shall exceed 45 feet in height except as provided in § 153.009.

(B) The following minimum requirements shall be observed subject to the additional requirements, exceptions and modifications as set forth elsewhere in this chapter.

- (1) Lot area: 40 contiguous acres;
- (2) Lot width: 300 feet at building setback line; and
- (3) Yard, building setback:
 - (a) Front: 75 feet;
 - (b) Side: 75 feet each side, 75 feet. adjacent to street; and
 - (c) Rear: 75 feet.

(C) Not more than 5% of the area shall be occupied by buildings.

(Ord. passed 10-11-1963)

PD PLANNED DEVELOPMENT DISTRICTS

§ 153.280 INTENT.

(A) The primary purpose of utilizing planned development districts for guiding new developments is to place emphasis upon a more flexible regulatory process as compared to rather rigid development regulations common to traditional zoning districts. The planned development process provides for a joint planning/design effort by developers and city officials rather than the city establishing maximum limits within which developers may perform.

(B) Benefits resulting from a regulatory process include an opportunity to protect and preserve valuable natural resources and amenities, and to assure a higher quality environment.

(Ord. passed 10-11-1963)

§ 153.281 EXHIBITS.

The following exhibits are required for presentation to and review by city staff and consultants, Planning Commission and City Council.

(A) Supporting material:

- (1) A narrative description of the developer's interest in the property in question;
- (2) Abstractor's certified property certificate prepared no more than 30 days prior to the submission of the application, showing the names and addresses of property owners within 350 feet of the outer boundaries of the property;
- (3) Location map showing property in relation to the city as a whole and to the city's primary elements such as thoroughfares, schools, parks and shopping areas;
- (4) A legal description of the property including approximate total acreage;
- (5) Boundary survey prepared by a registered surveyor of the property and 100 feet beyond showing existing property lines and dimensions, ownership of all parcels, platting, easements, street rights-of-way, utilities and buildings;

(6) Natural features map or maps of the property and 100 feet beyond showing contour lines at no more than two foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil conditions if relevant; and

(7) Map or maps of the property in question and 100 feet beyond showing existing zoning, land use and occupancy.

(B) Concept plan and related data:

(1) Map or maps and supporting narrative indicating in a schematic manner the proposed development including broad development objectives, land use disposition, vehicular and pedestrian circulation, housing types and densities if applicable, open space disposition and method of maintenance, and drainage and utility plans;

(2) Preliminary architectural plans showing floor plans, elevations and exterior wall finishes, except for detached single-family dwellings;

(3) Preliminary plat, if applicable; and

(4) The Planning Commission shall hold a public hearing and make a recommendation to the City Council. Approval of the concept plan by the City Council with or without modification does not constitute zoning approval but is only permission to file the final plan, and shall not constitute permission to initiate site improvements or building construction. The activities must await final plan and building permit approvals and rezoning.

(C) Final plan:

(1) The applicant shall submit a final plan to the Zoning Administrator. The final plan is the permanent public record of the Planned Development. It conveys essentially the same information as the Concept Plan but in a more refined manner. It may consist of all or a portion of the area encompassed by the Concept Plan, and shall reflect revisions of the Concept Plan as requested by the Planning Commission and/or City Council;

(2) The final plan must adhere to the following terms and conditions and must contain the following:

(a) Plan or plans must be at a scale of one inch equals 100 feet and supporting narrative description must depict in a detailed manner, proposed site development including location of structures, vehicular and pedestrian circulation facilities, parking facilities, housing densities, open space disposition and method of maintenance, grading, building elevations, landscaping treatment including species and size, and lighting systems. Typical dimensions are to be included;

(b) Final utilities plans must indicate size and placement of water, sanitary sewer and storm sewer lines and facilities;

(c) Final architectural plans for all structures;

(d) Final plat, if applicable; and

(e) Final grading and landscape plan.

(3) The Planning Commission shall review and recommend to the City Council which shall take appropriate action. Approval of the final plan shall constitute permission for the city to enter into contractual agreements for the construction of public improvements such as streets and utilities, and subsequently, for the Building Official to issue building permits.

(Ord. passed 10-11-1963)

§ 153.282 REVISIONS.

Minor changes in the location, placement and heights of buildings or structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final plan was approved.

(Ord. passed 10-11-1963)

§ 153.283 LAPSE OF APPROVAL.

(A) A planned development district shall lapse and become null and void one year following the date of planned development zoning approval, unless prior to the expiration of one year, a building permit is issued by the Building Official and development is commenced and diligently pursued toward completion on the subject site, or unless a staged development plan beyond one year was approved as a

part of the original planned development conditions of approval.

(B) A planned development district approval may be renewed for a second one-year period by the City Council for good cause.

(Ord. passed 10-11-1963)

PRD PLANNED RESIDENTIAL DEVELOPMENT DISTRICT

§ 153.295 INTENT.

In addition to the general purposes of Planned Development Districts as described in § 153.280, the purposes of the Planned Residential Development District (PRD) are to allow greater variety in the types of residential environment available to the residents in the city, to respond to recent changes in housing demands and in new housing concepts, to encourage the provision of privately controlled common open space ancillary to new housing developments, and to allow a more efficient allocation and maintenance of public facilities such as streets and utility lines serving new housing developments.

(Ord. passed 10-11-1963)

§ 153.296 PERMITTED USES.

Dwelling units in detached, semi-detached, attached or multi-story structures, or combinations thereof, as specified in the approved plan.

(Ord. passed 10-11-1963)

§ 153.297 DENSITY.

(A) It is intended that the gross density (number of housing units per acre of land) of the PRD District shall not exceed the density that would be achieved with the existing zoning district; however, the City Council may approve a higher density for good cause, but in no case shall the higher density exceed 115% of that permitted by the original district.

(B) An applicant desiring higher densities shall show that the higher number will not have an undue or adverse impact upon existing public facilities and upon the reasonable use and enjoyment of neighboring property and is appropriate for that site. In determining the reasonableness of the authorized housing units per acre, the physical amenities, increased efficiency in public facilities and services, and preservation of natural resources and amenities beyond ordinance requirements may be considered.

(Ord. passed 10-11-1963)

PMD PLANNED MULTI-USE DEVELOPMENT DISTRICT

§ 153.310 INTENT.

(A) In addition to the general purposes of Planned Development Districts described in § 153.280, the purpose of the Planned Multi-Use Development District (PMD) is to provide for development of a variety of complementary uses in a cohesive arrangement.

(B) Type and intensity of development is controlled by the development standards of the existing Residential, Commercial and Industrial Districts and by the Comprehensive Plan.

(Ord. passed 10-11-1963)

§ 153.311 PERMITTED USES.

Uses specified by the approved final plan for the property, including residential, commercial and industrial uses.

(Ord. passed 10-11-1963)

PERFORMANCE STANDARDS

The guiding of urban development so as to develop a compatible relationship of uses depends upon certain standards being maintained. Permitted uses, conditional and accessory uses shall conform to the following standards.

§ 153.325 NOISE POLLUTION.

Any use established shall be operated so as not to cause noise pollution. ***NOISE POLLUTION*** means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under conditions as could potentially be injurious to human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.

(Ord. passed 10-11-1963)

§ 153.326 AIR POLLUTION EMISSIONS.

Any use established, enlarged or remodeled after the effective date of this chapter shall be so operated so as not to cause excessive or abnormal un-permitted emissions that may cause air pollution endangering human health, cause air pollution damaging property or cause obnoxious odors constituting a public nuisance.

(Ord. passed 10-11-1963)

§ 153.327 TOXIC OR NOXIOUS MATTER.

Any use established shall be operated so as not to discharge across the boundaries of the lot or through percolation into the subsoil beyond the boundaries of the lot wherein the use is located toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety, comfort or welfare or cause injury or damage in property or business.

(Ord. passed 10-11-1963)

§ 153.328 VIBRATION.

(A) Any use creating periodic earth-shaking vibrations, such as may be created from a drop forge shall be prohibited if the vibrations are perceptible beyond the lot line of the site on which the use is located.

(B) This standard shall not apply to vibrations created during the process of construction.

(Ord. passed 10-11-1963)

§ 153.329 GLARE OR HEAT.

Any use requiring an operation producing an intense heat or light transmission shall be performed with the necessary shielding to prevent the heat or light from being detectable at the lot line of the site on which the use is located.

(Ord. passed 10-11-1963)

§ 153.330 EXPLOSIVES.

Any use requiring the storage, utilization or manufacturing of products which could decompose by detonation shall be located not less

than 1,000 feet from the R District line, unless otherwise approved by the City Council.

(Ord. passed 10-11-1963)

§ 153.331 WASTE MATERIAL.

Waste material shall not be washed into the public storm sewer system nor the sanitary sewer system without first having received a permit to do so from the city. If the permit is not granted, a method of disposal shall be devised which will not require continuous land acquisition for permanent operation, and will not cause a detrimental effect to the adjacent land. Should the waste be of a solid form rather than fluid, the storage area shall be so located and fenced as to be removed from public view.

(Ord. passed 10-11-1963)

§ 153.332 STORAGE TANKS.

Removal of storage tanks for petroleum or similar uses must comply with the Uniform Fire Code.

(Ord. passed 10-11-1963)

OFF-STREET PARKING AND LOADING SPACES

§ 153.345 PURPOSE; APPLICATION.

(A) Regulation of off-street parking and loading spaces in this chapter is to alleviate or prevent congestion of the public right-of-way and to promote the safety and general welfare of the public by establishing minimum requirements for off-street parking, loading and unloading of motor vehicles in accordance with the utilization of various parcels of land and structures.

(B) All applications for an occupancy permit in all districts shall be accompanied by a site plan drawn to scale and dimensioned indicating the location of off-street parking and loading spaces in compliance with the following requirements. The regulations and requirements as set forth in §§ 153.345 through 153.351 shall apply to the required and non-required off-street parking facilities in all use districts.

(Ord. passed 10-11-1963)

§ 153.346 GENERAL PROVISIONS.

(A) *Reduction of existing off-street parking space.* Off-street parking spaces and loading spaces existing upon the effective date of this chapter shall not be reduced in number unless the number exceeds the requirements set forth herein for a similar new use.

(B) *Gross leasable area.* The term **GROSS LEASABLE AREA** is the total floor area designed for tenant occupancy, including both owned and leased areas, and excluding common space and utility space.

(C) *Use of parking facilities.* Off-street parking facilities accessory to residential use shall be utilized solely for the parking of vehicles. Under no circumstances shall parking facilities accessory to residential structures be used for open storage of commercial vehicles nor for open air parking of vehicles belonging to employees, owner, tenant or customers of business or manufacturing establishments. Required off-street parking space in all districts shall not be utilized for open storage of goods or for the storage of vehicles that are inoperable, for lease, rent or sale.

(D) *Location of parking facilities.* Required off-street parking in the R Districts shall be on the same lot as the principal building. Within all districts, all vehicles normally owned or kept by the occupants on the premises must be parked in a private garage, stall, parking space or driveway on the lot. All parking areas and driveways must comply with § 153.347(D), requiring concrete-type or asphalt surface. In addition:

- (1) In an R District no parking shall be permitted in a front yard, unless the vehicle is located in a driveway;

(2) Parking may be located in a rear yard; and

(3) In an R District, no more than 30% of the front or rear yard may be used for parking or driveway purposes

(E) *Joint parking facilities.* Off-street parking facilities for a combination of one or more uses may be provided collectively in any district except the R-1 and R-2 Districts, provided the total number of spaces provided shall equal the sum of the separate requirements for each use.

(F) *Control of off-street parking facilities.* When required accessory off-street parking facilities are provided elsewhere than on the lot on which the principal use served is located, written authority for using the property for off-street parking shall be filed with the city so as to maintain the required number of off-street parking spaces during the existence of the principal use. No such parking facility at its closest point shall be located more than 100 feet from the premises.

(G) *Proof of parking.* All required parking must be shown on the final site and building plan, however, if approved by the City Council, a portion of required parking may be provided by showing proof of parking availability.

(Ord. passed 10-11-1963)

§ 153.347 DESIGN AND MAINTENANCE OF OFF-STREET PARKING AREAS.

(A) *Access and location.*

(1) Parking areas shall be designed so as to provide an adequate means of access to a public alley or street.

(2) No person shall construct a driveway without first obtaining a permit pursuant to § 32.16(A). All driveways shall be located entirely upon the permittee's property. It shall be the responsibility of the permittee to ensure that the driveway is constructed on private property. The driveway access shall not exceed 24 feet in width at the public walk centerline and shall be so located as to cause the least interference with traffic movement.

(B) *Calculating space.* When the calculation of the number of required off-street parking spaces results in a fraction, each fraction of one-half or more shall constitute another space.

(C) *Signs.* Signs located in any parking area necessary for orderly operation of traffic movement shall not be included as a part of the permitted display space.

(D) *Surfacing.* All of the area used for parking and driveways in all districts shall be of concrete-type or asphalt surface to control dust and drainage.

(E) *Lighting.* If lighting is provided, it shall be accomplished in such a manner as to have no direct source of light visible from the public right-of-way or adjacent land in an R District.

(F) *Maintenance of off-street parking space.* The operator of the principal use, uses or structures shall maintain in a neat and adequate manner the parking spaces, access ways, landscaping and required curbs and fences. Snow shall be removed from parking areas within 24 hours of significant snow accumulations.

(G) *Driveways/aisles.* The following regulations shall apply to all driveways and aisles in parking lots.

(1) The minimum distance between curbs of driveways at the right-of-way line shall be 20 feet.

(2) No driveway shall be less than 50 feet from any right-of-way line of a street intersection.

(3) The minimum driveway angle from a two-way access street shall be 60 degrees, from a one-way street, it shall be 30 degrees.

(4) Minimum parking space and aisle dimensions:

<i>Angle</i>	<i>Width</i>	<i>Stall Depth</i>	<i>1-Way Aisle Width*</i>	<i>2-Way Aisle Width</i>
0	9 feet	23 feet	15 feet	22 feet

45	9 feet	20 feet 6 inches	15 feet	22 feet
60	9 feet	21 feet 10 inches	18 feet	22 feet
90	9 feet	20 feet	20 feet	22 feet
*One-way aisle widths for multi-family residential, commercial and industrial development to be determined through site plan approval process				

(H) *Setbacks.* All enclosed parking spaces shall be setback from structures and lot lines as follows.

<i>Zoning District</i>	<i>Distance from Structures</i>	<i>Distance from Lot Lines - Front or Corner Side</i>	<i>Distance from Lot Lines - Interior - Side or Rear</i>
R-3	5 feet	10 feet	5 feet
R-4	10 feet	40 feet	20 feet

(Ord. 10-08, passed - -; Ord. passed 10-11-1963)

§ 153.348 NUMBER OF REQUIRED OFF-STREET PARKING SPACES.

Unless modified and approved as part of a site and building plan approval process, the number of required off-street parking spaces shall be as follows.

(A) Single-family dwelling: at least one enclosed parking space for each dwelling unit, except that two spaces shall be required for dwelling units in the R-1C District. A private garage shall constitute a parking space. One private garage per dwelling unit in the R-1C District shall be provided as part of the overall parking space required. No person in any district shall convert a private garage to living space unless other acceptable provisions are made to provide the required parking space.

(B) Two-family dwelling: at least one enclosed parking space per unit except that one and one-half spaces shall be required for each dwelling unit in the R-2 District. A private garage shall constitute a parking space in any district. At least one garage per dwelling unit in the R-2 District shall be provided as part of the overall parking space required. No person shall convert a private garage to living space unless acceptable provisions are made to provide the required parking space.

(C) Townhouses/single-family attached housing: at least two parking spaces per unit, plus at least one parking space per two units shall be provided in common lots for visitor parking use in excess of 1,000 square feet of floor space in the principal structure.

(D) For R Districts that permit structures housing three or more dwelling units without a conditional use permit, two parking spaces shall be provided per dwelling unit. At least half of the required spaces shall be enclosed. All enclosed parking spaces shall be designed with sufficient access area to allow temporary parking of vehicles on the access way without interfering with access to other required spaces.

(E) Athletic fields: at least one parking space for every six seats of design capacity.

(F) Auto repair, bus terminals, taxi terminals, boat and marine sales, bottling companies, shop for trade employing six people or less, garden supply stores, building material sales, motor vehicle sales and rental. At least six parking spaces, plus one additional space for every 800 square feet of floor area over 1,000 square feet.

(G) Bingo halls: at least one parking space for every three and one-half seats based on the design capacity of the hall.

(H) Bowling alley: at least eight parking spaces for every alley.

(I) Churches, theaters, auditoriums and mortuaries: at least one parking space for every three and one-half seats based on the design capacity of the main assembly hall. In stadiums, churches and other places of public assembly in which patrons or spectators occupy benches, pews or other similar seating facilities, each 22 inches of the seating facility shall be counted as one seat for the

purpose of determining required parking.

(J) Community centers, post offices, health clubs, physical or cultural studios, pool halls, libraries, private clubs, lodges or museums: at least ten spaces plus one for every 300 square feet of floor area in excess of 2,000 square feet of floor area in the principal structure.

(K) Day care centers: at least four spaces plus one for every 500 square feet in excess of 1,000 square feet of floor space in the principal structure.

(L) Furniture store, appliance store, warehouse under 15,000 square feet of floor area, auto sales, kennels and studios: at least one parking space for every 500 square feet in excess of the first 500 square feet of floor area in the principal structure.

(M) Golf courses, tennis clubs and public swimming pools: at least 20 spaces plus one for every 300 square feet in excess of 1,000 square feet of floor space in the principal structure.

(N) Hospitals: at least one parking space for every three hospital beds.

(O) Manufacturing, fabrication or processing of a product or material: at least four off-street parking spaces, plus one additional space for each 800 square feet of building. One additional off-street parking space shall be provided for every 2,500 square feet or fraction thereof of land devoted to outside storage.

(P) Motel, motor hotel or hotel: at least one parking space for every guest room.

(Q) Motor fuel stations: see § 153.382(C).

(R) Office buildings and professional offices having less than 6,000 square feet of floor area: one parking space per 200 square feet of floor area.

(S) Office buildings and professional offices having 6,000 square feet or more of floor area, banks, savings institutions: at least one parking space for every 250 square feet of floor area.

(T) Food and beverage establishments:

<i>Use</i>	<i>Parking Requirement*</i>
Coffee shop, tea house	1 space per 175 square feet floor area
Restaurant with or without on-sale wine, strong beer or non-intoxicating malt liquor	1 space per 125 square feet floor area
Establishment with on-sale intoxicating liquor	1 space per 100 square feet floor area
Establishment with on-sale intoxicating liquor and entertainment	1 space per 75 square feet floor area
Restaurant, carry-out	1 space per 225 square feet floor area
Restaurant, fast food	1 space per 110 square feet floor area
*Parking spaces shall not exceed occupancy load as determined by the Building Official	

(U) Retail sales and service establishments:

(1) For buildings that are 10,000 square feet or less, at least one off-street parking space for every 200 square feet of floor area;

(2) For buildings that are between 10,000 and 100,000 square feet, at least 50 off-street parking spaces, plus one space for every 250 square feet of floor area over 10,000 square feet; and

(3) For buildings over 100,000 square feet, at least 360 off-street parking spaces, plus one space for every 300 square feet of floor area over 100,000 square feet.

(V) Schools: high school through post-secondary: at least one parking space for every seven students based on design capacity plus one for every three classrooms.

(W) Skating rink, dance hall, public auction house, golf driving range, miniature golf and similar uses: at least 15 off-street parking spaces, plus one additional space for every 300 square feet of floor area over 2,000 square feet.

(X) Warehouse over 15,000 square feet of floor area, storage handling of bulk goods: at least one parking space for every 2,000 square feet of floor area.

(Ord. 01-08, passed - -; Ord. 05-06, passed - -; Ord. 07-27, passed - -; Ord. 10-08, passed - -; Ord. passed 10-11-1963)

§ 153.349 APPLICATION OF OFF-STREET LOADING AND UNLOADING REGULATIONS.

(A) The regulations and requirements set forth in this subchapter shall apply to the required and non-required loading and unloading facilities in all districts.

(B) If, in the application of the requirements of this section, a fractional number is obtained, one loading space shall be provided for a fraction of one-half or more, and no loading space shall be required for a fraction of less than one-half.

(1) *Location.* All loading berths shall be 25 feet or more from the intersection of two street rights-of-way. Loading berths shall not occupy the front yard or a side yard adjacent to a street.

(2) *Size.*

(a) Unless otherwise specified the first berth required shall not be less than 12 feet in width and 50 feet in length.

(b) Additional berths shall be not less than 12 feet in width and 25 feet in length. All loading berths shall maintain a height of 14 feet or more.

(3) *Access.* Each loading berth shall be located with appropriate means of access to a public street or alley in a manner that will least interfere with traffic.

(4) *Surfacing.* All loading berths and access ways shall be improved with a durable, dust-free material.

(5) *Accessory uses.* Any area allocated as a required loading berth or access drive so as to comply with the terms of this chapter shall not be used for the storage of goods, inoperable vehicles nor be included as a part of the area necessary to meet the off-street parking area.

(6) *Screening.* Loading berths must be completely screened from eye level view of streets and open spaces by means of landscaping that is at least 75% opaque within two years or by a screen wall of the same materials and color as the principal building.

(Ord. 01-08, passed - -; Ord. passed 10-11-1963)

§ 153.350 NUMBER OF REQUIRED LOADING BERTHS.

(A) Auditorium, convention hall, public buildings, hospitals, schools, hotels, sports arena: at least one loading berth 25 feet in length for each building having 1,000 to 10,000 square feet of floor area. For those buildings having 10,001 square feet of floor space to 100,000 square feet of floor area or fraction thereof, one additional loading berth 50 feet in length.

(B) Manufacturing, fabrication, processing and warehousing: at least one loading berth 25 feet in length for each building having 3,000 square feet or fraction thereof plus one loading berth 50 feet in length for each 25,000 square feet of floor area up to 100,000 square feet plus one loading berth for each 50,000 square feet of floor area over the first 100,000 square feet of floor area. The operator of the business shall have the option to declare the length of the berths required for buildings above 100,000 square feet of floor area except that half or more of the total number of berths required shall be 50 feet in length.

(C) Retail sales and service stores, offices: at least one loading berth 25 feet in length for each Building having 6,000 square feet of floor area or more plus one additional loading berth 50 feet in length for each 25,000 square feet of floor area up to 100,000 square feet.

(Ord. passed 10-11-1963)

§ 153.351 UNDERGROUND PARKING IN R-4 MULTIPLE-FAMILY DISTRICTS.

The total minimum lot area requirements may be decreased by 300 square feet for each parking space that is provided under the principal use structure or in some other manner underground which allows use of the grade level above the space for other parking, yard or recreation space.

(Ord. 98-16, passed - -; Ord. passed 10-11-1963)

LAND EXCAVATION/FILLING/GRADING

§ 153.365 LAND EXCAVATION/ FILLING/GRADING.

(A) Land excavation is the removal of sand, dirt, gravel, rock, clay or similar earth material or unsuitable foundation material from the land.

(B) Land filling is the deposit of the earth material so as to raise existing surface grades.

(C) Grading is the movement of the earth material within a given site.

(D) For purposes of this section, it is assumed that a typical dump truck has a carrying capacity of approximately ten "loose" cubic yards of earth material.

(1) *Commercial mining prohibited.* Extraction of earth materials for commercial purposes such as on-going sand and gravel mining operations shall be prohibited within the city.

(2) *Permits required.*

(a) Land excavation, grading or filling in excess of 200 cubic yards of material shall require a permit from the Public Works Director, after review and approval of the exhibits required hereunder.

(b) Land excavation, grading or filling in excess of 3,000 cubic yards of material shall require a conditional use permit according to procedures outlined in § 153.028.

(3) *Permit exceptions.* A permit under this section shall not be required for the following:

(a) Excavations, grading or fills of less than 200 cubic yards of material;

(b) Excavations or fills associated with a development project on platted property which have commenced within two years after an approved plat has been filed with the county;

(c) Excavations, grading or fills by state, county or city authorities in connection with the construction or maintenance of roads, highways, parks or utilities or on slope or utility easements, provided the activity is conducted within public rights-of-way or easements;

(d) Curb cuts, utility hook-ups or street openings for which another permit is required from the city; or

(e) Any development for which a conditional use permit has been approved and granted and a final grading plan approved as a part thereof.

(4) *Permit application/exhibits.* Application for excavation and filling permits shall be made in writing on forms supplied by the city and shall be submitted to the Zoning Administrator for processing. The following information and exhibits shall be submitted with the completed application form:

(a) A map or plan of the proposed excavation or fill area and 50 feet around showing existing and proposed elevations at two-foot contours, and showing any existing buildings within the area; and

(b) Identification of proposed truck hauling routes, including the following:

1. Hours of operation;
2. Period of operation;
3. Method of controlling dust on site and along haul routes;
4. Method of controlling erosion;

5. Assurance that spillage of material on and damage to public streets used as haul routes shall be cleaned up and repaired to the satisfaction of the Public Works Director; and

6. Other information as required by the Zoning Administrator to protect the interests of the city and affected property owners including, but not limited to, surface water drainage.

(5) *Requirements.*

(a) The excavation, grading or filling permit shall run for one year unless a lesser or greater period is specified by the City Council.

(b) At the end of excavation, grading or filling operations, the disturbed area shall be restored with topsoil or other approved cover material and shall be reseeded to establish approved vegetation.

(c) The City Council may require a surety bond in such form and sum as the City Council may determine, running to the city, to cover the cost of corrective measures such as repairing streets and highways used as haul roads. In any case, the applicant shall bear the cost of the corrective measures as may be required.

(Ord. passed 10-11-1963)

SPECIAL PROVISIONS

§ 153.380 ACCESSORY BUILDINGS OR STRUCTURES.

(A) No accessory buildings or structures shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.

(B) No accessory buildings or structures shall exceed the height of the principal building, and in no case, shall the accessory buildings exceed 15 feet in height in the R Districts.

(C) No accessory buildings or structures for uses such as plant growing, storage or play, other than a garage attached or unattached to the principal building, shall be located within any yard other than the rear yard. No detached garage shall be located nearer the front lot line than the principal building on the lot. Gazebos may be located in a side yard provided setbacks and other zoning requirements are met.

(D) Accessory buildings or structures shall be located not less than five feet from a side or rear property line in R-1A, R-1B, R-2, R-3 and B-5 Districts, ten feet from a side or rear property line in R-1C Districts, and four feet from a side or rear property line in R-4 Districts.

(E) (1) Exterior materials and finish of accessory buildings must match or complement the exterior finish of the principal structure in material, color and texture. Exterior walls of accessory structures must be covered only with siding (e.g., wood, vinyl, aluminum or metal horizontal lap), stucco, brick, glass or other comparable material as approved by the Zoning Administrator. Prohibited materials include, but are not limited to, cloth, fabric, canvas, plastic sheets, tarps, tarpaper and insulation. The placement or use of framing for hoop houses or other hoop designed apparatus, tent garages and other similar apparatus is also prohibited.

(2) *Exceptions.* The following are excluded from the requirements of division (E)(1) above:

- (a) Accessory structures less than 120 square feet made of sheet metal, corrugated metal or shaped metal;
- (b) Commercial greenhouses; and
- (c) Playgrounds.

(F) All accessory buildings or structures in R-1 and R-2 and B-5 Districts shall additionally conform to the following requirements.

(1) There shall be no more than one detached garage on a lot.

(2) In addition to one detached garage, there shall be no more than one accessory building or structure on a lot. Exception: schools located in an R-1 or R-2 district shall be allowed up to four accessory buildings or structures without a conditional use permit, provided that there is no more than one detached garage and all accessory buildings or structures comply with the remaining requirements of this section. Schools shall obtain a conditional use permit for more than four accessory buildings or structures.

(3) No detached garage may exceed 624 square feet in area, except on lots of 75 feet width or greater, in which case the maximum size of a detached garage may not exceed 800 square feet in area. Other accessory buildings may not exceed 200 square feet in area. The maximum size of either the detached garage or an accessory building, but not both, may be increased by ten square feet of building area for every 2,000 square feet of lot area in excess of the required minimum lot area; provided, however, that no detached garage shall exceed 1,000 square feet in area and no accessory building shall exceed 250 square feet in area. For each 20 square feet increase in the allowable building size, the required side and rear yard setbacks shall be increased one foot.

(4) All accessory buildings or structures shall be securely affixed to the ground in a manner that will resist movement from storms or vandalism.

(Ord. 09-02, passed - -; Ord. 09-04, passed - -; Ord. 09-19, passed - -; Ord. passed 10-11-1963; Ord. 14-04, passed 8-11-2014)

§ 153.381 FENCES.

(A) *Building permit requirements.* No person, firm or corporation shall construct or erect a fence without first obtaining a building permit pursuant to § 32.16(A).

(B) *Construction and maintenance.* Fence construction shall be of good workmanship, with material reasonably suited for its intended purpose. Fences shall be maintained on both sides in a condition of good repair, and shall not be in or remain in the condition of disrepair, including, but not limited to, leaning or sagging. A fence that is in disrepair is a public nuisance and abatement of that nuisance shall be undertaken by the Zoning Administrator. Barbed wire, sharp-pointed wire, sheet metal or electrical fences are not allowed. A tight fence which blocks or obstructs more than 75% of light or ventilation in front of the front building line is not allowed. In addition, on a corner lot, if the primary door of the residence is located in the side yard abutting the street, a tight fence which blocks or obstructs more than 75% of light or ventilation in the side yard abutting the street is not allowed.

(1) The following materials are approved for fence construction:

- (a) Wrought iron;
- (b) Aluminum (wrought iron design);
- (c) Wood;
- (d) Vinyl/PVC, and composite fencing (i.e., Trex); and
- (e) Chain-link with approved posts and cap, provided they are of woven type material at least 12-gauge.

(2) The following materials are not approved for fence construction:

(a) Farm fence of any kind, which includes, but is not limited to woven or welded wire, chicken wire, plastic deer fence, snow fence, steel bar fence, and similar type fencing, except as allowed for gardens.

- (b) T-posts, pipes, and metal stakes;
- (c) Barbed wire (except for security fences around power substations); and
- (d) Temporary barriers not permanently affixed to the ground.

(3) The material requirements of this section shall not apply to school athletic fields.

(C) *Appearance and location.* Fences shall not contain pictures or lettering and shall be one uniform color. Fences shall be located inside of property lines and cannot be located on the property line, a neighbor's land or on public property (boulevards, sidewalks, etc.). It is the responsibility of the permittee to ensure that it is constructed on the permittee's property. Structural supports of the fence shall be on the interior side of the fence.

(D) *Height; all districts.* In all zoning districts within the city, fences shall meet the following height requirements.

(1) Fences from the front building line to the front lot or parcel line of that lot shall not exceed four feet.

(2) Fences from the front building line to the rear property line shall not exceed six feet in height.

(3) Fences along the side yard property line shall be located at least five feet from any principal structure located on the adjacent property. If a fence is located closer than five feet from a principal structure located on the adjacent property, the fence shall not exceed four feet.

(4) On a corner lot, fences along the side yard abutting the street shall not exceed six feet. Exception: if the primary door of the residence is located in the side yard abutting the street, fences shall not exceed four feet in the side yard abutting the street.

(5) On a corner lot, fences along the rear yard shall not exceed four feet in height from the front building line of the abutting lot to the front lot line or parcel line of the abutting lot.

(6) Whenever a fence and wall are used in combination, or placed upon a berm, the combined height shall not exceed the permitted height outlined above. For the purposes of this clause, fences placed within three feet of a berm or wall shall be considered to be used "in combination" with the berm or wall.

(E) *Height; commercial and industrial zones.* Fences with a security arm for barbed wire may be erected to a height of eight feet, if a conditional use permit is obtained or if modified and approved as part of the site plan approval process under § 153.031. The security arm shall only extend over the property of the property owner. The security fencing shall not be located along a property line abutting a residential use.

(F) *Height; abutting public ways.* No fence, thicket, hedge or landscaping shall be erected, kept or maintained in excess of four feet in height on a corner lot within 25 feet of the intersection of a public right-of-way.

(G) *Fences around swimming pools.* Inground swimming pools shall be surrounded with an enclosure screened structure, or fencing at least five feet in height and of sufficient density to control access, having openings not in excess of six inches. Gates shall be self-closing, with a latching device to secure closing, and hardware for permanent locking device which shall be located at least 48 inches in height from the ground. The requirements of this section shall not apply to above-ground pools with a removable access ladder or an above-ground pool surrounded by a fenced deck, with a self-closing gate and latching or locking device, as above described. The latching requirement shall not be subject to any nonconforming use status under § 153.006.

(H) *Special fences.* Fences for special purpose or differing in material, height, construction or location may be permitted in any district by variance.

(Ord. 05-05, passed - -; Ord. 07-29, passed - -; Ord. 08-19, passed - -; Ord. passed 10-11-1963; Ord. 13-03, passed 6-10-2013)

§ 153.382 AUTO-RELATED USES.

(A) *Purpose and intent.* The purpose and intent of this chapter is to establish specifications and guidelines for motor vehicle-related uses within the city, (for definition of motor vehicle-related uses, see § 153.004). Those uses shall be imposed with restrictions and conditions to ensure that the location and design are consistent with the standards, purposes and procedures of this chapter and the Comprehensive Plan.

(B) *General provisions.* All motor vehicle-related uses must comply with the site and building plan approval process in § 153.032, when applicable. The following provisions shall also apply to motor vehicle-related uses.

(1) No storage of wrecked, abandoned, disassembled or junk vehicles is allowed. All vehicles located on the site must be licensed and operable, unless they are held for repair, in which case they must comply with division (B)(2) below. Open storage of repaired licensed and operable motor vehicles may be addressed in the conditional use permit or site plan approval process.

(2) Vehicles held for repair shall only be stored in a location identified on the site plan, however, no such vehicles may remain outside more than seven days without city approval or an order from a law enforcement agency.

(3) All vehicle repair, assembly, disassembly, maintenance, except minor maintenance, must be conducted entirely within a building. **MINOR MAINTENANCE**, for purposes of this section, means maintenance that does not require the use of tools, such as adding oil, adding windshield washer fluid, and wiper blade replacement. All minor maintenance must occur on a paved surface and in a location identified on the site plan.

(4) In addition to the number of parking spaces required by § 153.348, if the use includes vehicle repair, a minimum of three additional parking spaces shall be provided for each service bay or stall.

(5) Motor vehicle sales shall only be allowed for new products and shall be conducted entirely within a building.

(6) Motor vehicle rentals shall comply with all of the following conditions:

(a) The lot size shall be limited to one acre or less; and

(b) Rental vehicles shall be stored within a building or in a lot that adheres to the following:

1. The lot is located 100 feet from Robert Street and 100 feet from any R District;

2. The lot is located in a rear or side yard; and

3. The lot is screened from public rights of way and all adjacent R Districts. Screening must comply with § 153.032(E).

(c) No vehicles for rent shall display any advertising.

(C) *Motor fuel stations.* In addition to the provisions in § 153.382(B), unless modified and approved as part of a site and building plan approval process, the following provisions apply to motor fuel stations:

(1) *Area and design requirements.*

(a) Parking setbacks must comply with the setbacks for the applicable zoning district.

(b) The following requirements shall be observed for building setbacks of motor fuel stations:

	<i>Motor Fuel Station</i>	<i>Motor Fuel Station with Vehicle Rental</i>
Lot width	150 feet	200 feet
Front yard	0 to 30 feet	20 to 60 feet
Side yard	0 to 10 feet	10 to 50 feet
Side adjacent to "R"	10 feet minimum	50 feet minimum
Side adjacent to street	*0 to 20 feet	*10 to 30 feet
Rear yard	20 feet minimum	50 feet minimum

*On corner lots, traffic sight lines must be preserved and maintained to ensure safety. Buildings and parking lots must not be constructed within "sight triangles." A ***SIGHT TRIANGLE*** is defined as that portion of a corner lot being within a triangle, the apex of which is the intersecting point of the two street right-of-way lines and the short sides of which extend 25 feet along each right-of-way line.

(c) A setback of any overhead canopy weather projection free-standing or projecting from the station structure shall be not less than ten feet from the street right-of-way line nor less than 20 feet from the adjacent property line.

(d) Total height of any overhead canopy or weather projection shall not exceed 20 feet.

(e) Car washes, when operated as an accessory use to motor fuel stations, shall be subject to requirements outlined in division (D) below.

(2) *Architecture, landscaping, lighting, open storage.*

(a) The setback area shall be utilized as a protective buffer, following the landscape requirements of § 153.032(E). At all corner sites, a landscaped yard shall occupy not less than a 25-foot triangle at the street intersection corner of the property.

(b) Used oil cans, discarded auto parts, discarded tires and similar items of debris shall not be stored on the premises, unless the items of debris are located in an approved trash enclosure.

(c) Tires for sale shall not be stored or displayed outside the principal building, except:

1. In a display rack during business hours; or
2. In a permanent outside display container that is completely enclosable and located in conformance with setback requirements. The display container shall be closed when the station is not open for business.

(d) Propane for exchange/sale may be stored in an exterior display if the following conditions are met:

1. Display and placement is in accordance to § 91.01, as required by the Fire Chief;
2. Display must be located adjacent to a wall of the principal structure;
3. Display is no larger than 100 cubic feet;
4. Propane tanks for sale may not exceed 20 pounds in size; and
5. Display must be protected by bollards approved by the Zoning Administrator in conjunction with the Fire Chief.

(e) Except for tires and propane as allowed above, all goods for sale by a motor fuel station shall be displayed within the principal building.

(3) *Parking requirements.*

(a) Parking surfaces shall be designed to fit the requirements of a minimum seven-ton axle load.

(b) A minimum of four parking spaces plus three additional parking spaces for each service bay or stall shall be provided. One additional parking space shall be provided for each 200 square feet of floor space devoted to retail sales in a motor fuel station.

(4) *Access driveway.*

(a) The distance from a driveway to the intersection of two streets shall not be less than 30 feet measured along the curb line with the property line and the point of tangency of the curb lines with the curb return of the driveway, unless otherwise recommended by the City Engineer and approved by the City Council.

(b) The minimum distance between driveways shall be 30 feet measured at the property or street right-of-way unless otherwise recommended by the City Engineer and approved by the City Council.

(c) The distance from the driveway to the property line of an adjacent property shall not be less than five feet measured along the curb line between the point of intersection of the curb line with the property line extended and the point of tangency of the curb line with the curb return of the driveway, unless otherwise recommended by the City Engineer and approved by the City Council.

(d) Access driveways shall be 30 feet wide measured along the property line between the curb faces of the driveway unless otherwise recommended by the City Engineer and approved by the City Council.

(D) *Car washes.* In addition to the provisions in § 153.382(B), unless modified and approved as part of the site and building plan approval process, the following provisions apply to car washes:

(1) In addition to the information required for the site and building plan approval and conditional use permit, plans must show the location and dimensions in relation to property and rights-of-way of all buildings, driveways and stacking areas.

(2) Car washes must provide an area of 20 feet by nine feet for each parking and stacking space required pursuant to the following:

(a) Principal use: When a car wash is the principal use, stacking space for not less than 40 cars shall be provided to assure that all vehicles awaiting service shall be parked on the premises.

(b) Accessory use: when a car wash is an accessory use to a motor fuel station or other use, stacking space for not less than five cars shall be provided to assure that all vehicles awaiting service shall be parked on the premises. If there is more than one service bay or stall, then one additional stacking space shall be provided for each additional bay or stall.

(3) Waste water from car washing shall be emitted into the sanitary sewer after flowing through a grease and mud trap. A sewer flow rate will be set in relation to the size of the facility. Failure to maintain acceptably clean grease and mud traps will be cause for

revocation of a conditional use permit.

- (4) Lot requirements:
 - (a) Parking setbacks must comply with the applicable zoning district.
 - (b) Building setbacks must comply with the following:

Front yard	0 to 60 feet
Side yard	0 to 10 feet
Side adjacent to "R"	10 feet minimum
Side adjacent to street	*0 to 20 feet
Rear yard	40 feet minimum
*On corner lots, traffic sight lines must be preserved and maintained to ensure safety. Buildings and parking lots must not be constructed within "sight triangles." A SIGHT TRIANGLE is defined as that portion of a corner lot being within a triangle, the apex of which is the intersecting point of the two street right-of-way lines and the short sides of which extend 25 feet along each right-of-way line.	

- (5) All surfaces utilized by vehicles or surface water drainage shall be paved with asphalt or concrete.
- (6) No streamers, pennants or other attention-attracting devices shall be used.
- (7) The operation shall not emit steam, water, vapor or high velocity water that would create a nuisance for the neighboring properties.
- (8) The premises of the establishment shall be kept free of litter and debris. Refuse receptacles shall be provided for each vacuum cleaner and for each bay for the collection of trash.

(Ord. 11-09, passed - -; Ord. passed 10-11-1963)

TELECOMMUNICATIONS SERVICES

§ 153.395 RADIO AND TELEVISION ANTENNAS.

- (A) Radio and television antennas and support system, weighing 25 pounds or more, or encompassing an area of more than 70 square feet are permitted uses in an R-1A District, provided that the following conditions and provisions are met.
 - (1) No antenna shall be located within the front yard.
 - (2) Antennas attached or mounted to buildings shall comply with the requirements of the International Building Code as adopted, wind design of the State Building Code, and such compliance and method of attachment shall be certified by a registered state structural engineer.
 - (3) The total area of the antenna shall not encompass more than 120 square feet.
 - (4) The antenna shall be located and designed so as to minimize impact at street level from surrounding properties and public streets.
 - (5) Free standing antennas, including those attached to buildings for additional support, shall be setback from the side and rear lot lines a distance at least equal to their height.
 - (6) Before erecting the antenna, a building permit shall be first secured from the city building. Application for the permit shall be in writing and made to the City Building Official. All persons proposing to erect, construct or locate antennas with the city shall apply

for and obtain a Building permit according to the provisions in the city code.

(7) No signs, pictures or messages shall be painted on or attached to any antennas.

(B) Strictly excluded from this provision are satellite dish antennas, and antenna towers and personal wireless services.

(Ord. 04-16, passed - -; Ord. passed 10-11-1963)

§ 153.396 SATELLITE DISH ANTENNA.

(A) Satellite dish antennas greater than one meter (39 inches) in diameter, are conditional uses in R-1A Districts provided that the following conditions are met.

(1) Dish antennas shall be prohibited within any front yard.

(2) Dish antennas shall be subject to required setbacks for accessory buildings and structures.

(3) No signs or messages shall be painted on or attached to the dish antenna or its support structure.

(4) Dish antennas shall be located and designed so as to minimize impact at street level from surrounding properties and public streets.

(5) Dish antennas on rooftops shall be prohibited.

(6) Dish antennas within existing or required side yards shall be permitted only if a usable rear yard is not available.

(7) Maximum heights of ground supported dish antennas from top of antenna to ground shall be 15 feet for detached antennas and 20 feet for antennas attached to garages.

(B) Satellite dish antennas greater than one meter (39 inches) in diameter, are permitted uses in a B-1 District provided that the following conditions are met.

(1) Dish antennas shall be subject to required setbacks for principal or accessory structures, whichever is less.

(2) Dish antennas on rooftops shall be prohibited.

(3) Maximum height of ground supported dish antennas shall be 20 feet from top of antenna to ground.

(C) Satellite dish antennas greater than one meter (39 inches) in diameter, are conditional uses in an I-1 District provided that they meet the setback requirements for principal or accessory buildings or structures, whichever is less.

(Ord. passed 10-11-1963)

§ 153.397 ANTENNA TOWERS.

(A) *Purpose and intent.* In order to accommodate the communication needs of residents and businesses while protecting the public health, safety and general welfare of the community, the Council finds that these regulations are necessary to:

(1) Minimize adverse visual effects of towers through careful design, siting standards and zoning restrictions;

(2) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and

(3) Maximize the use of existing and approved towers and buildings to accommodate new personal communications services antennas in order to reduce the number of towers needed to serve the community.

(B) *Personal communications services tower.* All persons proposing to erect, construct or locate a tower within the city, shall apply for and obtain a conditional use permit according to the provisions in this chapter. An application for a conditional use permit for a personal communications services tower shall not be approved unless it can be documented by the applicant that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one-half mile radius of the proposed tower due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by

a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;

(2) 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 competent radio frequency engineer and the interference cannot be prevented at a reasonable cost; and/or

(3) Existing or approved towers and buildings within the one-half mile radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a competent radio frequency engineer.

(C) *Co-location requirements for existing towers.* Owners of existing towers and buildings shall provide rates, terms and conditions that are just, reasonable and non-discriminatory for physical co-location of equipment.

(D) *Construction.* All persons proposing to erect, construct or locate antennas within the city shall apply for and obtain a building permit according to the provisions in the city code. Antenna towers and antennas shall comply with the following requirements.

(1) All applicable provisions of the city code.

(2) Towers shall be certified by a qualified and licensed professional engineer indicating that towers conform to the structural standards of the International Building Code.

(3) Any proposed personal communications services tower shall be designed, structurally, electrically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least two additional users, with antenna ports located at ten foot intervals.

(4) No part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk or property line, unless approved by the City Council.

(5) Antennas and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes, regulations and standards.

(6) Towers with antennas shall be designed to withstand a uniform wind loading as prescribed by the International Building Code.

(E) *Design.*

(1) Towers and antennas shall be designed to blend into the surrounding environment through the use of color and architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.

(2) Towers shall be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment or better facilitate co-location.

(3) Towers, poles, antennas and related structures must be screened by security fencing to prevent unauthorized entry. The base of the tower and any accessory structures shall be landscaped with vegetation or in a manner that is compatible with the surrounding character, buildings or landscape.

(F) *Location of towers and antennas.*

(1) *Location of towers.* A conditional use permit may be granted for antenna towers only in the following zoning districts:

(a) B Districts;

(b) I Districts;

(c) C Districts; and

(d) Any R District provided it is in an area designated as public/semipublic or parks and recreation on the city land use plan map.

(2) *Location of antennas.* A building permit may be granted for antennas only on the following structures, and provided they do not extend more than 20 feet above the existing structure:

(a) Water towers;

(b) Existing telecommunication towers;

- (c) Sides or roofs of buildings over three stories;
- (d) Church steeples; and
- (e) Existing power or telephone pole structures.

(G) *Setback requirements.* All towers must be designed so that the upper portion will fold or collapse against the tower so that no part of the tower will fall on neighboring property should the structure collapse. Towers must be setback a distance at least equal to the required setback of the underlying zoning district. In addition, the following requirements must be met:

- (1) Towers must be setback a minimum of 150 feet from Robert Street; and
- (2) Towers must be setback a minimum of 75 feet from the property line of any residential use.

(H) *Tower height.* Towers are not to exceed 170 feet in height, including antenna attachments.

(I) *Lighting.* Towers shall not be illuminated by artificial means and shall not display strobe lights unless the lighting is specifically required by the Federal Aviation Administration or other federal or state authority. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the tower.

(J) *Attachments.* No signs, pictures or messages shall be attached to the antenna tower or its antennas or appurtenances.

(K) *Accessory buildings.* Accessory equipment associated with the antenna tower shall be located within a Building or on the ground within a screen designed and landscaped to be compatible with the proposed structure and surrounding environment. All utility buildings and accessory buildings or structures shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements pursuant to § 153.397(G). Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

(L) *Existing towers and antennas.* Antennas and towers in existence as of the date of this chapter, which do not conform or comply with this section may continue in use for the purpose now used and as now existing but may not be replaced or structurally altered without complying in all respects with this section.

(M) *Abandoned or unused towers.* Abandoned or unused towers shall be removed within six months of the cessation of operations and the site shall be restored to its original state, unless a time extension is approved by the City Council. Cessation of operations shall be communicated to the City Building Official by the landowner who owns the property on which the tower is located. To ensure the removal of obsolete and unused towers, the applicant shall, before the issuance of a building permit, provide security in the form of one of the following: an unconditional bond; a letter of credit in an amount sufficient to cover the removal costs of the tower and its accessory facilities; or other form of financial assurance as will satisfy the City Council.

(N) *Additional submittal requirements.* In addition to the information required in the application for the conditional use permit, the following supplemental information must be included in the application:

- (1) A report from a qualified and licensed professional engineer which does the following:
 - (a) Describes the tower height and design, including a cross section and elevation;
 - (b) Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - (c) Describes the tower's capacity, including the number and type of antennas that it can accommodate;
 - (d) Documents that the tower and proposed associated antennas conform with accepted electrical engineering methods and practices;
 - (e) Includes an engineer's stamp and registration number;
 - (f) Includes a map showing the location of the applicant's proposed or approved antennas or towers within the city and within two miles of the boundaries of the city; and
 - (g) Includes other information necessary to evaluate the request.

(2) For all personal communications services towers, 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.

(3) Before attaching additional antennas or modifying any existing antenna tower, a qualified professional must evaluate and determine that each additional antenna or modification will not interfere with the existing antennas; and the antenna tower can support the additional antennas or modification. Proof of this evaluation must be filed with the Building Official prior to the attachment of additional antennas or any modifications are made.

(O) *Inspections and violations.*

(1) Any violation of this section is a violation of this chapter and shall be deemed a misdemeanor.

(2) Notice of violations will be sent by registered mail to the owner and the owner will have 30 days from the date the notification is issued to make modifications. The owner will notify the Building Official that the modifications have been made, and as soon as possible thereafter, another inspection will be made and the owner notified of the results. If modifications are not made, the city may require removal of the tower and/or associated antennas.

(P) *Exceptions to conditional use permit.* Conditional use permits are not required for:

(1) Any antenna or combination of antenna and tower rigidly attached to a building provided that the combination of antenna and tower does not exceed a total height of 20 feet above the highest point of attachment;

(2) Antennas and towers used by the city for city purposes;

(3) The adjustment or replacement of the elements of an antenna array affixed to a tower or antenna, provided that replacement does not reduce the safety factor; or

(4) Antennas and/or towers erected temporarily for test purposes, for emergency communication, or for broadcast remote pick-up operations, provided that all construction and height requirements in this section are met. Temporary antennas shall be removed within 72 hours following installation, unless a time extension is granted by the Building Official.

(Ord. 09-13, passed - -; Ord. passed 10-11-1963)

SHORELAND MANAGEMENT

§ 153.410 POLICY.

The uncontrolled use of shorelands of the city affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise development of shorelands of public waters. The legislature of the state has delegated responsibility to the municipalities of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of waters and related land resources. This responsibility is hereby recognized by the city.

(Ord. passed 10-11-1963)

§ 153.411 DESIGNATION OF TYPES OF LAND USE.

(A) *Shoreland management classification.*

(1) In order to guide the wise development and utilization of shorelands of protected waters for the preservation of water quality, natural characteristics, economic values and the general health, safety and welfare, certain protected waters in the city have been given a shoreland management classification.

(2) These protected waters of the city have been classified by the Commissioner of Natural Resources as follows:

Natural Environment Lakes

Thompson Lake

DNR I.D. #

(B) *Shoreland Overlay District.* The shorelands of the city are hereby designated as a Shoreland Overlay District. The purpose of the Shoreland Overlay District is to provide for the wise utilization of shoreland areas in order to preserve the quality and natural character of these protected waters of the city.

(1) *Permitted uses.* All permitted uses allowed and regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(2) *Conditional uses.* All conditional uses and applicable attached conditions allowed and regulated by the applicable zoning district underlying this Shoreland Overlay District as indicated on the official zoning map of the city and as required by § 153.413.

(3) *Substandard uses.*

(a) Any uses of shorelands in existence prior to the date of enactment of this section which are permitted within the applicable zoning district, but do not meet the minimum lot area, setbacks or other dimensional requirements of this chapter are substandard uses.

(b) Substandard uses, including substandard sanitary facilities, shall be allowed to continue; however, any structural alteration or addition to a substandard use which will increase the substandard dimensions shall not be allowed.

(4) *Prohibited uses.* Any uses which are not permitted or conditional uses as regulated by the applicable zoning district underlying this shoreland overlay district as indicated on the official zoning map of the city.

(Ord. passed 10-11-1963)

§ 153.412 ZONING PROVISIONS.

(A) *Lot and building requirements.*

(1) The following standards shall apply to all shorelands of the protected waters listed in § 153.411(A) within the city.

(2) Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than those set forth herein, then the more restrictive standards shall apply:

<i>Natural Environment Waters</i>	
Lot area:	
Waterfront lots	40,000 square feet
Other lots	20,000 square feet
Water frontage and lot width at building line	125 feet
Structure setback from ordinary high water mark	150 feet
Structure height limitation	35 feet
Maximum lot area covered by impervious surface	30%

(B) *Substandard lots.*

(1) Lots of record in the office of the County Recorder prior to August 5, 1985, which do not meet the requirements of division (A) above may be allowed as building sites provided that:

(a) The use is permitted in the zoning district;

(b) The lot is in separate ownership from abutting lands; and

(c) All other sanitary and dimensional requirements of this chapter are complied with insofar as practical.

(2) The minimum length of water frontage for substandard lots of record shall be 75 feet.

(C) *Roads and parking areas.* Roads and parking areas shall be located to retard the runoff of surface waters and nutrients in

accordance with the following criteria.

(1) Where feasible and practical, all roads and parking areas shall meet the setback requirements established for structures in division (A) above.

(2) In no instances shall these impervious surfaces be placed less than 50 feet from the ordinary high water mark.

(3) Natural vegetation or other natural materials shall be used to screen parking areas when viewed from the water.

(D) *Elevation of lowest floor.* The elevation of the lowest floor, including basements, shall be at a level at least three feet above the highest known water level. In those instances where sufficient data on known high water levels are not available, the ordinary high water mark shall be used.

(E) *Exceptions to structure setback requirements.*

(1) Setback requirements from the ordinary high water mark shall not apply to piers and docks. Location of piers and docks shall be controlled by applicable state and local regulations.

(2) On undeveloped shoreland lots that have two adjacent lots with existing principal structures on both such adjacent lots, any new residential structure may be set back a distance equal to the average setback of the adjacent structures from the ordinary high water mark of 50 feet, whichever is greater, provided all other provisions of the Shoreland Overlay District are complied with.

(Ord. passed 10-11-1963)

§ 153.413 SHORELAND ALTERATIONS.

(A) *Removal of vegetation.* The removal of natural vegetation shall be restricted to prevent erosion into protected waters, to consume nutrients in the soil, and to preserve shoreland aesthetics. Removal of natural vegetation in the Shoreland Overlay District shall be subject to the following provisions.

(1) Selective removal of natural vegetation is allowed, provided that sufficient vegetative cover remains to screen cars, dwellings and other structures when viewed from the water.

(2) Clear cutting of natural vegetation is prohibited.

(3) Natural vegetation shall be restored insofar as feasible after any construction project is completed to retard surface runoff and soil erosion.

(4) The provisions of this section shall not apply to permitted uses which normally require the removal of natural vegetation.

(B) *Grading and filling.* Grading and filling in shoreland areas or any alteration of the natural topography where the slope of the land is toward a protected water or a watercourse leading to a protected water must be authorized by a permit. The permit may be granted subject to the conditions that:

(1) The smallest amount of bare ground is exposed for as short a time as feasible.

(2) Temporary ground cover, such as mulch, is used and permanent ground cover, such as sod, is established.

(3) Methods to prevent erosion and trap sediment are employed.

(4) Fill is stabilized to accepted engineering standards.

(C) *Excavations.* Excavations on shorelands where the intended purpose is a connection to a protected water shall require a permit from the Zoning Administrator before construction is begun. The permit may be obtained only after the Commissioner of Natural Resources has issued a permit to work in the beds of protected waters.

(D) *Protected water alteration.* Any work which will change or diminish the course, current or cross-section of a protected water or wetland shall be approved by the Commissioner of Natural Resources, and the approval shall be construed to mean the issuance by the Commissioner of Natural Resources of a permit under the procedures of Minn. Stat. § 103F.201, as it may be amended from time to time, and other related statutes.

(Ord. passed 10-11-1963)

§ 153.414 UTILITIES.

Any premises intended for human occupancy shall be connected to municipal sewer and water services.

(Ord. passed 10-11-1963)

§ 153.415 SUBDIVISIONS.

(A) No land shall be subdivided which is held unsuitable by the city for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities, or any other feature likely to be harmful to the health, safety or welfare of future residents of the proposed subdivision or of the community.

(B) Copies of all plats within the shoreland overlay district shall be submitted to the Commissioner of Natural Resources within ten days of final approval by the city.

(C) Planned Development (PD): altered zoning standards may be allowed as exceptions to this chapter for PDs, provided preliminary plans are approved by the Commissioner of Natural Resources prior to their approval by the city, and further provided:

(1) The PD is connected to a municipal sanitary sewer;

(2) Open space is preserved through the use of restrictive deed covenants, public dedications or other methods;

(3) The following factors are carefully evaluated to ensure the increased density of development is consistent with the resource limitations of the protected water:

(a) Suitability of the site for the proposed use;

(b) Physical and aesthetic impact of increased density;

(c) Level of current development;

(d) Amount and ownership of undeveloped shoreland;

(e) Levels and types of water surface use and public accesses; and

(f) Possible effects on overall public use.

(4) Any commercial, recreational, community or religious facility allowed as part of the planned development shall conform to all applicable federal and state regulations including, but not limited to, the following:

(a) Licensing provisions or procedures;

(b) Waste disposal regulations;

(c) Water supply regulations;

(d) Building codes;

(e) Safety regulations;

(f) Regulations concerning the appropriation and use of Public Waters as defined in Minn. Stat. § 103G.005(15), as it may be amended from time to time; and

(g) Applicable regulations of the State Environmental Quality Board.

(5) The final plan for a planned development shall not be modified, amended, repealed or otherwise altered unless approved in writing by the developer, the municipality and the Commissioner of Natural Resources; and

(6) There are centralized shoreline recreation facilities such as beaches, docks and boat launching facilities.

(Ord. passed 10-11-1963)

§ 153.416 NOTIFICATION PROCEDURES.

(A) A copy of the notice of a public hearing to consider a variance to the provisions of the Shoreland Overlay District or a conditional use or an inconsistent plat in the Shoreland Overlay District shall be sent to the Commissioner of Natural Resources such that the notice is received by the Commissioner at least ten days prior to the hearings.

(B) A copy of all amendments to this chapter and final decisions granting variances or conditional uses within the Shoreland Overlay District shall be sent to the Commissioner of Natural Resources within ten days of the amendment or final action.

(Ord. passed 10-11-1963)

SIGNS; REGULATIONS

§ 153.430 PURPOSE.

(A) This subchapter shall coordinate the type, placement and scale of signs within the different land use zones; encourage the innovative use of design; promote both renovation and proper maintenance; and guarantee equal treatment under the law.

(B) This subchapter is not intended to favor commercial over noncommercial speech. These purposes shall be accomplished by regulation of the erection, use and maintenance of signs within the city.

(C) The use of signs is regulated by district to establish a comprehensive system of sign control that accommodates the need for a well-maintained, safe and attractive community, and the need for effective communications including, but not limited to, business identification.

(D) The purpose of this chapter is to promote the health, safety, general welfare, aesthetics and image of the community by regulating signs that are intended to communicate to the public.

(E) Signs are subject to the following regulations and to the requirements of the city code.

(Ord. passed 10-11-1963)

§ 153.431 DEFINITIONS.

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

ABANDONED SIGN. Any sign and/or its supporting sign structure that remains without a message or whose display surface remains blank for more than one year or that pertains to a time, event or purpose that no longer applies shall be deemed to have been abandoned.

AWNING. A roof-like cover, often of fabric, plastic, metal or glass, designed and intended for protection from the weather or as a decorative embellishment, that projects from a wall or roof of a structure primarily over a window, walk or the like. Any part of an **AWNING** that also projects over a door shall be considered an **AWNING**.

AWNING SIGN. A sign or graphic printed on or in some fashion attached directly to the awning material.

BALLOON SIGN. A sign consisting of a bag made of lightweight material supported by helium or hot or pressured air that is greater than 24 inches in diameter.

BANNER. Any sign of lightweight fabric or similar material mounted to a pole or a Building at one or more edges. Flags, as defined herein, shall not be considered **BANNERS**.

BUILDING MARKER. Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or inlaid so as to be part of the building or when constructed of bronze or other non-combustible material.

CANOPY. A roof-like cover, often of fabric, plastic, metal or glass on a support, that provides shelter over a doorway.

CANOPY SIGN. Any sign that is part of or attached to a canopy made of fabric, plastic or any other structural protective cover

over a door or entrance.

COMMERCIAL SPEECH. Speech advertising a business, profession, commodity, service or entertainment.

DYNAMIC DISPLAY SIGN. Any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays.

ELECTRONIC CHANGEABLE COPY SIGN. A sign or portion thereof that displays electronic, non-pictorial, text information in which each alphanumeric character, graphic or symbol is defined by a small number of matrix elements using different combinations of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the display area. **ELECTRONIC CHANGEABLE COPY SIGNS** include computer programmable, microprocessor controlled electronic displays.

ELECTRONIC GRAPHIC DISPLAY SIGN. A sign or portion thereof that displays electronic, static images, static graphics or static pictures, with or without text information, defined by a small number of matrix elements using different combinations of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices within the display area where the message change sequence is accomplished immediately or by means of fade, re-pixelization or dissolve modes. **ELECTRONIC GRAPHIC DISPLAY SIGNS** include computer programmable, microprocessor controlled electronic or digital displays. **ELECTRONIC GRAPHIC DISPLAY SIGNS** include images or messages with these characteristics projected onto buildings or other objects.

ERECT. The activity of constructing, building, raising, assembling, placing, affixing, attaching, creating, painting, drawing or any other way of bringing into being or establishing.

FLAG. Any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and that contains distinctive colors, patterns, symbols, emblems, insignia or other symbolic devices.

FREESTANDING SIGN. Any sign that has supporting sign structure as required in § 153.435(E) that is placed on, or anchored in, the ground and that is independent from any building or other structure.

GRADE. The final ground elevation after construction. Earth mounding criteria for landscaping and screening is not part of the final **GRADE** for sign height computation.

GROSS AREA. The method of calculating the allowable square footage of signs shall be as follows.

(1) Individual letters or figures: when attached onto a surface such as a building, canopy, awning or wall, the area shall be the smallest rectangle that encompasses all of the letters or symbols.

(2) Monument signs: the area within the frame, including all lettering, wording and accompanying designs and symbols, together with all the background, whether open or enclosed, on which they are displayed, including a message board. The area shall not include the main supporting sign structure but shall include other ornamental attachments that are not a part of the main support of the sign.

(3) Wall signs: the area within the frame, including all lettering, wording and accompanying designs and symbols, together with all the background, whether open or enclosed, on which they are displayed, including a message board. The area shall include all other ornamental attachments that are not a part of the main support of the sign.

(4) Pylon signs: the area within the frame, including all lettering, wording and accompanying designs and symbols, together with all background, whether open or enclosed, on which they are displayed, including a message board. The area shall not include the main supporting sign structure, but shall include all other ornamental attachments that are not a part of the main support of the sign.

HEIGHT. The height of a sign shall be computed as the vertical distance measured from the base of the sign at grade to the top of the highest attached component of the sign.

ILLEGAL SIGN. A sign is illegal if it is erected without first complying with all city ordinances and regulations in effect at the time of its construction and erection or use, including, but not limited to, §§ 150.105 through 150.110 and this subchapter. Abandoned signs, unsafe signs and signs attached to vacant buildings are also **ILLEGAL SIGNS**.

ILLUMINATED SIGN. Any sign that contains an element designed to emanate artificial light internally or externally.

INTEGRAL ROOF SIGN. Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, so that no part of the sign extends vertically above the highest portion of the roof and so that no part of the sign is separated from the rest of the roof by a space of more than six inches.

LEGALLY ESTABLISHED NONCONFORMING SIGN. Any sign and its support structure lawfully Erected prior to the effective date of this chapter that fails to conform to the requirements of this chapter. A sign that was erected in accordance with a variance granted prior to the adoption of this chapter and does not comply with this chapter shall be deemed to be a **LEGALLY ESTABLISHED NONCONFORMING SIGN**.

MONUMENT SIGN. Any freestanding sign independent from any building or other structure that is mounted on the ground or mounted on a base at least as wide as the sign.

NONCOMMERCIAL SPEECH. Dissemination of messages not classified as commercial speech which include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics.

NON-ELECTRONIC CHANGEABLE COPY SIGN. A sign or portion thereof that has a readerboard for the display of text information in which each alphanumeric character, graphic or symbol is defined by objects, not consisting of an illumination device, that may be changed or re-arranged manually or mechanically with characters, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign.

OFF-PREMISES SIGN. A sign bearing a commercial message that is located on property that is not the premises, property or site of the use identified or advertised on the sign.

PENNANT. A relatively long, tapering flag.

PROJECTING SIGN. A sign that projects from a wall or other surface. **PROJECTING SIGNS** may not project more than 12 inches from the surface to which they are affixed.

PYLON SIGN. Any freestanding sign that has its supportive structure(s) anchored in the ground and a sign face elevated above ground by pole(s) or beam(s) with an open area below the face of the sign.

ROOF SIGN. Any sign erected wholly upon the roof or parapet of a building that is wholly or partially supported by the building upon which it is erected and extends vertically above the highest portion of the roof. This does not include an integral roof sign.

ROTATING SIGN. A sign that revolves or rotates on an axis.

SIGN. Any structure, fixture, placard, announcement, declaration, device, demonstration or insignia used for direction, information, identification or to advertise or promote any business, product, goods, activity, services, ideas or interests.

TEMPORARY SIGN. Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard, wall board or other light materials, with or without frames, intended to be displayed for a short period of time.

UNSAFE SIGN. Any sign that is out of order, in disrepair, rotten, hazardous or in any other manner unsafe.

VIDEO DISPLAY SIGN. A sign that changes its message or background in a manner or method of display characterized by motion or pictorial imagery, which may or may not include text, and depicts action or a special effect to imitate movement, the presentation of pictorials or graphics displayed in a progression of frames which give the illusion of motion, including, but not limited to, the illusion of moving objects, moving patterns or bands of light, or expanding or contracting shapes. **VIDEO DISPLAY SIGNS** do not include electronic changeable copy signs or dynamic display signs. **VIDEO DISPLAY SIGNS** include images or messages with these characteristics projected onto buildings or other objects.

WALL. Any structure that defines the exterior boundaries or courts of a building/structure and that has a slope of 60 degrees or greater with the horizontal plane.

WALL SIGN. A sign fastened to the exterior front, rear or side wall of a building or structure that does not extend vertically above the highest portion of the roof or project more than 12 inches from the building or structure.

(Ord. passed 10-11-1963)

§ 153.432 PERMITS.

(A) No sign, unless exempted by this chapter, shall be erected, altered, reconstructed or moved in the city without first securing a permit from the city as provided in §§ 150.105 through 150.110. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

(B) If the sign requires electricity, it must be installed in accordance with the current Electrical Code and a separate permit from the Building Official must be obtained prior to placement.

(Ord. passed 10-11-1963)

§ 153.433 EXCEPTIONS.

The following signs shall not be required to obtain a license or permit for the installation of the sign pursuant to §§ 150.105 through 150.110, and shall be permissible in all zoning districts; these exceptions shall not be construed so as to excuse the installer of the sign, or the owner of the property upon which the sign is located, from conforming to the other provisions of this chapter, or the city code.

- (A) Building markers;
- (B) Noncommercial flags;
- (C) Official or public notices issued by a court or governmental agency;
- (D) Signs six square feet or less in gross area located on property used as residential use and located in an R District;
- (E) Directional signs that are six square feet or less; and
- (F) Signs on bus shelters.

(Ord. passed 10-11-1963)

§ 153.434 PROHIBITED SIGNS.

The following signs are prohibited in all zoning districts:

- (A) Abandoned signs;
- (B) Balloon signs;
- (C) Flags other than noncommercial flags, as defined herein;
- (D) Illegal signs;
- (E) Permanent banners or pennants, except those permitted by Minn. Stat. § 412.221(34), as it may be amended from time to time;
- (F) Permanent sale signs;
- (G) Portable (trailer) signs unless approved under §§ 150.105 through 150.110;
- (H) Projecting signs other than awning signs or canopy signs that extend or project over the sidewalk, street right-of-way or highway right-of-way;
- (I) Roof sign;
- (J) Rotating signs;
- (K) Search lights or strobe lights unless approved as a temporary sign under §§ 150.105 through 150.110;
- (L) Signs containing audio speakers or any form of pyrotechnics;
- (M) Signs painted, attached or in any other manner affixed to fences, roofs, other than integral roof signs, trees, rocks or other similar natural surfaces, or attached to a post or pole in the right-of-way, or bridges, towers or similar public structures;
- (N) Signs that appear in color or design to resemble a traffic sign or signal or that make use of words, symbols or characters in such a manner as to interfere with, mislead or confuse pedestrian or vehicular traffic;

(O) Signs that are affixed to inoperable vehicles or trailers or signs that are affixed to vehicles parked on a property and not intended to be moved for a period of 48 hours or more. At all times, vehicles containing advertising and/or signage shall not be parked along the property frontage or Robert Street;

(P) Temporary signs, except as allowed by permit pursuant to §§ 150.105 through 150.110;

(Q) Unsafe signs; and

(R) Video display signs.

(Ord. passed 10-11-1963)

§ 153.435 GENERAL PROVISIONS.

(A) *Legally established nonconforming signs.* A sign that is legally established upon the effective date of this chapter may be continued at the size and in the manner of operation existing upon such date except as specified in this section.

(1) A legally established nonconforming sign may be continued through repair, replacement, restoration, maintenance or improvement, but may not be expanded, moved or relocated.

(2) Sign copy and sign faces may be changed on legally established nonconforming signs when there is no change in use of the site or when only a portion of a multiple tenant sign is being changed.

(3) If a sign or its structure is declared unsafe by the Building Official, this chapter shall not prohibit the sign or its structure from being made safe.

(4) Whenever a legally established nonconforming sign shall have been damaged by fire, flood, explosion, earthquake, war, riot or act of God, by more than 50% or more of its fair market value, it may be reconstructed and used as before if it is reconstructed within 180 days after the calamity.

(5) Whenever a legally established nonconforming sign is abandoned for a period of more than one year, any future use of the sign shall be in conformity with the provisions of this chapter.

(B) *Repairs and removal.*

(1) *Abandoned signs.* Any abandoned sign shall be removed or otherwise properly brought into compliance by the property owner upon receipt of notice to do so given by the Zoning Administrator.

(2) *Illegal signs.* Any fixed, permanent sign constructed, placed or maintained in violation of this chapter shall be removed by the property owner upon receipt of notice to do so given by the Zoning Administrator.

(3) *Unsafe signs.* Any unsafe sign shall be removed or otherwise properly secured by the property owner upon receipt of notice to do so given by the Zoning Administrator. No unsafe sign shall be repaired or rebuilt except in accordance with the provisions of this section and upon a permit issued by the city.

(C) *Signs constituting a public nuisance.* Any abandoned, illegal or unsafe sign is hereby declared to be a danger to the health, safety and welfare of the citizens of the city, and is declared to be a public nuisance, subject to abatement and assessment as provided in Chapter 94, except that legally established nonconforming signs shall not be abated until they have been abandoned for more than one year.

(D) *Signs in all districts shall be located at least ten feet from all lot lines.* Except as otherwise stated, no more than one freestanding sign shall be located on any single lot.

(E) *Supporting sign structure design criteria.*

(1) All freestanding signs must be mounted on or incorporated into a supporting sign structure whose exterior construction materials are comprised of brick, stone, stucco, synthetic stucco or concrete masonry units (CMU) that are textured, burnished or decorative.

(2) Exterior construction materials must be maintenance-free and colored only by means of a pigment integral to the material, not applied to the surface and be compatible with the building(s) on the lot.

(F) *Window coverage.*

(1) Window signs may be placed within a building in Commercial and Industrial Zoning Districts, however the window coverage shall not exceed 30% of each window.

(2) There shall be no more than a maximum area of 80 square feet per street frontage for window signs.

(G) *Electronic changeable copy sign, electronic graphic display sign and dynamic display sign requirements.*

(1) *Mode of operation.*

(a) Electronic changeable copy signs, electronic graphic display signs and dynamic display signs shall only be allowed to operate in static mode.

(b) Animation, motion or video displays are prohibited.

(c) Any change from one static display to another must be instantaneous and shall not include any distracting effects, such as dissolving, spinning or fading.

(2) *Minimum display time.* The minimum display time for electronic changeable copy signs, electronic graphic display signs and dynamic display signs shall be eight seconds.

(3) *Color.*

(a) Electronic changeable copy signs, electronic graphic display signs and dynamic display signs may use multiple colors within the display but the use of color shall not create a distraction or a hazard to the public health, safety or welfare.

(b) No portion of the display may change in color or color intensity in any manner.

(c) Each line of text in any direction shall be uniform in color.

(4) *Distance between signs.*

(a) Electronic changeable copy signs and electronic graphic display signs must be located at least 75 feet from any other electronic changeable copy sign, electronic graphic display sign or dynamic display sign as measured in a straight line from the base of the sign to the base of any other electronic changeable copy sign, electronic graphic display sign or dynamic display sign.

(b) Dynamic display signs must be located at least 800 feet from any other dynamic display sign as measured in a straight line from the base of the sign to the base of any other dynamic display sign.

(5) *Application to existing signs.* The electronic changeable copy sign, electronic graphic display sign and dynamic display sign standards shall apply to all existing and future electronic changeable copy signs and electronic graphic display signs, unless otherwise determined by the city that an existing sign qualifies as a nonconforming use under state statute or city code.

(Ord. 01-10, passed - -; Ord. 10-01, passed - -; Ord. passed 10-11-1963)

§ 153.436 PERMITTED SIGNS BY DISTRICT.

Figure A-1 detailing permissible signs by district.

(A) Within the R Districts, signs must comply with the following regulations.

(1) Signs shall not exceed 32 square feet in gross area and six feet in height.

(2) The following types of signs are permissible:

(a) Monument signs; and

(b) Non-illuminated awning signs and non-illuminated canopy signs, provided they comply with the following requirements.

1. They shall be limited to single-story buildings or to the first level only of multi-story buildings.

2. They shall have a minimum clearance of eight feet above grade unless projecting over a sidewalk, in which case clearance shall be 14 feet above grade.

3. They shall not be located closer than two feet from any street right-of-way or highway right-of-way, and shall not extend

above the top of the wall of a building.

4. The maximum height of an awning or canopy shall be five feet.

5. Wall hangers shall not be visible.

6. Signage on awnings or canopies may be substituted for allowed wall signage, but is limited to 25% of the awning or canopy area.

(3) The following types of signs are prohibited:

- (a) Electronic changeable copy signs;
- (b) Electronic graphic display signs;
- (c) Integral roof signs;
- (d) Non-electronic changeable copy signs;
- (e) Wall signs;
- (f) Dynamic display signs;
- (g) Pylon signs; and
- (h) Off-premises signs.

(B) Within the B-1 Districts, signs must comply with the following regulations.

(1) Signs shall not exceed 50 square feet in gross area and ten feet in height.

(2) The following types of signs are permissible:

(a) Illuminated or non-illuminated awning signs and canopy signs provided they comply with the requirements of divisions (A)(2)(b)1 through (A)(2)(b)6 above and the following requirements.

1. For signs or illuminated areas less than three feet in height, the degree of illumination or candlepower of illuminated canopies and awnings shall be limited to a single lamp exterior fluorescent fixture, running the entire length of the illuminated area.

2. For signs or illuminated areas three to five feet in height, the degree of illumination or candlepower shall be limited to double lamp fixtures.

3. In no event shall the power of the fixture exceed ten watts per foot for single lamp fixtures and 20 watts per foot for double lamp fixtures.

- (b) Integral roof signs;
- (c) Monument signs;
- (d) Non-electronic changeable copy signs; and
- (e) Wall signs.

(3) Each tenant in a multi-tenant building is allowed one wall sign. The aggregate gross area of all wall signs shall not exceed 10% of the area of the wall to which they are attached..

(4) The following types of signs require a conditional use permit: electronic changeable copy signs as provided in § 153.433(H).

(5) The following types of signs are prohibited:

- (a) Electronic graphic display signs;
- (b) Dynamic display signs;
- (c) Pylon signs; and
- (d) Off-premises signs.

(C) Within the B-2 Districts, signs must comply with the following regulations.

- (1) Signs shall not exceed 50 square feet in gross area and ten feet in height;
- (2) The following types of signs are permissible:
 - (a) Any sign permissible in the B-1 District; and
 - (b) Electronic changeable copy signs as regulated in § 153.435(G).
- (3) The following types of signs are prohibited:
 - (a) Electronic graphic display signs;
 - (b) Dynamic display signs;
 - (c) Pylon signs; and
 - (d) Off-premises signs.

(D) Within the B-3, B-5 and B-6 Districts, signs must comply with the following regulations.

- (1) Signs shall not exceed 50 square feet in gross area and ten feet in height.
- (2) The following types of signs are permissible: any sign permissible in the B-2 District.
- (3) The following types of signs require a conditional use permit:
 - (a) Electronic graphic display signs as regulated in § 153.435(G);
 - (b) In the B3 and B6 Districts only, off-premises monument signs provided:
 1. Sign must be located on a property directly adjacent to Robert Street.
 2. Off-premises signage is for a commercial zoned business directly adjacent to the property on which the sign is located.
 3. The off-premises signage must be on a free-standing sign.
 4. Only one free-standing sign is allowed for each property. The sign must meet the design requirements as outlined in § 153.435(E).
 5. If the off-premises sign is co-located on signage for the property on which the sign is located, the size of the entire sign may be increased to a maximum of 70 square feet. Maximum height is limited to ten feet.
 6. Up to a maximum of two businesses may be co-located on a free-standing sign.
- (4) The following types of signs are prohibited:
 - (a) Dynamic display signs;
 - (b) Pylon signs;
 - (c) Off-premises signs, with the exception of signs allowed per division (D)(3)(b) above.

(E) Within the B-4 Districts, signs must comply with the following regulations.

- (1) Signs shall not exceed 200 square feet in gross area and 20 feet in height.
- (2) No more than one monument sign shall be located on any single lot.
 - (a) The aggregate gross area of all monument signs in any single B-4 District shall not exceed a total of 200 square feet.
 - (b) Exception: in any B-4 District where, as of the date of the enactment of this chapter, there exists a legally established nonconforming sign or an existing sign that complies with the size requirements for a sign in a B-4 District, then, in addition to the legally established nonconforming sign or existing sign, a sign may be erected on any separate lot within the same B-4 District; however, it must comply with the size requirements for signs in a B-3 District.
- (3) The following types of signs are permissible: any sign permissible in the B-3 District.

- (4) The following types of signs require a conditional use permit:
 - (a) Electronic graphic display signs, as regulated in § 153.435(G).
 - (b) Off-premises monument signs, provided:
 - 1. Sign must be located on a property directly adjacent to Robert Street.
 - 2. Off-premises signage is for a commercial zoned business directly adjacent to the property on which the sign is located.
 - 3. The off-premises signage must be on a free-standing sign.
 - 4. Only one free-standing sign is allowed for each property. The sign must meet the design requirements as outlined in § 153.435(E).
 - 5. If the off-premises sign is co-located on signage for the property on which the sign is located, the size of the entire sign may be increased to a maximum of 70 square feet. Maximum height is limited to ten feet.
 - 6. Up to a maximum of two businesses may be co-located on a free-standing sign.
- (5) The following types of signs are prohibited:
 - (a) Dynamic display signs;
 - (b) Pylon signs;
 - (c) Off-premises signs, with the exception of signs allowed per division (E)(4)(b) above.
- (F) Within the I-1 District, signs must comply with the following regulations.
 - (1) Signs shall not exceed 50 square feet in gross area and ten feet in height.
 - (2) The following types of signs are permissible: any sign permissible in the B-2 District.
 - (3) The following types of signs require a conditional use permit: electronic graphic display signs as regulated in § 153.435(G).
 - (4) The following types of signs are prohibited:
 - (a) Dynamic display signs;
 - (b) Pylon signs; and
 - (c) Off-premises signs.
- (G) Within the I-2 Districts, signs must comply with the following regulations.
 - (1) Monument signs shall not exceed 50 square feet in gross area and ten feet in height.
 - (2) The following types of signs are permissible: any sign permissible in the I-1 District.
 - (3) The following types of signs require a conditional use permit:
 - (a) Electronic graphic display signs as regulated in § 153.435(G);
 - (b) Dynamic display signs as regulated in § 153.435(G);
 - (c) Pylon signs provided:
 - 1. Each sign is a maximum of 700 square feet in size;
 - 2. Each sign is a maximum of 80 feet in total height;
 - 3. Each sign is located at least 800 feet from any other pylon sign as measured in a straight line from the base of the sign to the base of any other pylon sign.
 - (d) Off-premises signs provided:
 - 1. Each sign is located at least 800 feet from any other off-premises sign as measured in a straight line from the base of the

sign to the base of any other off-premises sign.

- (e) More than one freestanding sign on any single lot.

(H) Within the C District, signs must comply with the following regulations.

- (1) Signs shall not exceed 32 square feet in gross area and six feet in height.

- (2) The following types of signs are permissible:

(a) Awning signs and canopy signs provided they comply with the requirements for awning signs and canopy signs in the R District;

- (b) Monument signs; and

- (c) Wall signs.

- (3) The following types of signs are prohibited:

- (a) Electronic changeable copy signs;

- (b) Electronic graphic display signs;

- (c) Integral roof signs;

- (d) Non-electronic changeable copy signs;

- (e) Dynamic display signs;

- (f) Pylon signs; and

- (g) Off-premises signs.

[illegible]

copy signs.										
Non-illuminated awning and canopy signs	X	X	X	X	X	X	X	X	X	X
Pylon signs									*	
Wall signs		X	X	X	X	X	X	X	X	X
Dynamic display signs									*	
Off-premises signs				*		*	*		*	

(Ord. 12-04, passed - -; Ord. passed 10-11-1963; Ord. 15-13, passed 12-15-2015)

§ 153.437 MESSAGE SUBSTITUTION.

(A) The owner of any sign that is otherwise allowed by this chapter may substitute noncommercial copy or message in lieu of any other commercial or noncommercial sign copy or message without additional approval or permitting subject to the operational standards set forth in this chapter.

(B) The purpose of this provision is to prevent any inadvertent favoring of commercial speech or message over noncommercial speech or message.

(Ord. passed 10-11-1963)

§ 153.438 NONCOMMERCIAL SPEECH.

Notwithstanding any other provisions of this chapter, all signs of any size containing noncommercial speech may be posted from 46 days before the state primary in any general election year until ten days following the general election and 13 weeks prior to any special election until ten days following the special election.

(Ord. 10-09, passed - -; Ord. passed 10-11-1963)

SEXUALLY-ORIENTED ESTABLISHMENTS

§ 153.455 PURPOSE.

(A) The purpose of this section is to provide the opportunity for operation and establishment of sexually-oriented establishments while providing controls that limit the negative impacts of sexually-oriented establishments on residential and commercial areas, and protecting the general health, safety and welfare of the citizens of the city.

(B) The nature of sexually-oriented establishments is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries or parks.

(C) Furthermore, the concentration of sexually-oriented establishments has an adverse effect upon the use and enjoyment of adjacent areas. The nature of sexually-oriented establishments requires that they not be allowed within certain zoning districts or within minimum distances from each other or residential uses.

(D) Special regulation of sexually-oriented establishments is necessary to ensure that the adverse secondary effects will not contribute to or enhance criminal activity in the area of the uses nor will it contribute to the blighting or depreciation of surrounding property.

(Ord. passed 10-11-1963)

§ 153.456 GENERAL PROVISIONS.

Sexually-oriented establishments as defined in this section shall be subject to the following general provisions.

(A) Activities classified as obscene as defined in Minn. Stat. § 617.241, as it may be amended from time to time, are not permitted and are prohibited.

(B) Sexually-oriented establishments shall be prohibited from locating in any building which is also utilized for residential purposes.

(C) Sexually-oriented establishments shall be prohibited from locating in any building which is also currently licensed as a tattoo establishment, pawnshop, massage business, check cashing business or businesses where alcoholic beverages are sold.

(Ord. passed 10-11-1963)

§ 153.457 DEFINITIONS.

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

SEXUALLY-ORIENTED BUSINESS.

(1) A business that:

(a) Has any sexually-oriented materials in its inventory, stock in trade or publicly traded merchandise;

(b) Devotes any of its floor area (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) to sexually-oriented materials;

(c) Derives any revenue from sexually-oriented materials; or

(2) A business that engages for any length of time in a sexually-oriented use as defined herein or any other use that has an emphasis on specified sexual activities or specified anatomical areas.

SEXUALLY-ORIENTED ESTABLISHMENT. Any sexually-oriented business or sexually-oriented use.

SEXUALLY-ORIENTED MATERIALS. Visual, printed or aural materials, and other objects or devices, which:

(1) Contain, depict, simulate or describe specified sexual activities or specified anatomical areas;

(2) Are marketed for use in conjunction with, or are primarily used only with or during, specified sexual activities; or

(3) Are designed for sexual stimulation.

SEXUALLY-ORIENTED USES. Any of the following activities, even if the activity exists for only a short time.

(1) ***ADULT BODY PAINTING STUDIO.*** An establishment or business which provides the service of applying paints or other substances, whether transparent or non-transparent, to the body of a patron when the body is wholly or partially nude in terms of specified anatomical areas.

(2) ***ADULT BOOKSTORE.*** A building or part of a building used for the barter, rental or sale of items consisting of: instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities; or printed matter, pictures, slides, records, audio tape, videotape, motion picture film, CD ROMs, DVDs or other forms of recording if such items are distinguished or characterized by the emphasis on the depiction or description of specified sexual activities or specified anatomical areas. No obscene work shall be allowed.

(3) ***ADULT CABARET.*** A building or portion of a building used for providing dancing or other live entertainment, if the building or portion of a building entertainment is distinguished and characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.

(4) ***ADULT CAR WASH.*** A wash facility for any type of motor vehicle that allows employees, agents, independent contractors or persons to engage in specified sexual activities or to display specified anatomical areas.

(5) ***ADULT COMPANION ESTABLISHMENT.*** A companion establishment and which provides the service of engaging in or

listening to conversation, talk or discussion between an employee of the establishment and a customer, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

(6) **ADULT CONVERSATION/RAP PARLOR.** A conversation/rap parlor and which provides the services of engaging in or listening to conversation, talk or discussion if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

(7) **ADULT HEALTH/SPORT CLUB.** A health/sport club if the club is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

(8) **ADULT HOTEL OR MOTEL.** A hotel or motel from patronage and where material is presented which is distinguished and characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(9) **ADULT MASSAGE PARLOR, HEALTH CLUB.** A massage parlor or health club and which provides the services of massage, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

(10) **ADULT MINI-MOTION PICTURE THEATER.** A building or portion of a building which a capacity for less than 50 persons used for presenting material if the material is distinguished and characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(11) **ADULT MODELING STUDIO.** An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to the customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn sculptured, photographed or otherwise depicted by the customers.

(12) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished and characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(13) **ADULT MOTION PICTURE STUDIO.** A building or portion of a building used for the production, recording, filming or taping of videos or films distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(14) **ADULT MOTION PICTURE THEATER.** A building or portion of a building with a capacity of 50 or more persons used for presenting material if the building or portion of a building as a prevailing practice of age or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

(15) **ADULT NOVELTY BUSINESS.** A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

(16) **ADULT SAUNA.** A sauna which provides a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

(17) **ADULT STEAM ROOM/ BATHHOUSE FACILITY.** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning; relaxing or reducing agent if the service provided by the steam room/bathhouse is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

SPECIFIED ANATOMICAL AREAS.

(1) Less than completely or opaquely covered human genitals, pubic region, buttock, anus or female breast(s) below a point immediately above the top of the areola; and

(2) Human male genitals in a discernable turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES.

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical

stimulation or unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerastia;

- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;
- (4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast(s);
- (5) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, bettering, binding or other physical restraint of any such persons;
- (6) Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation in the context of a sexual relationship.

(Ord. passed 10-11-1963)

§ 153.458 REGULATIONS.

(A) Sexually-oriented establishments shall be prohibited in all of the city's zoning districts set forth in § 153.011, except the I-1 and I-2 Districts, where the businesses and uses are conditional uses, provided that the conditions of divisions (B) through (H) below are met.

(B) Sexually-oriented establishments shall be located at least 600 radial feet, as measured in a straight line from the property line upon which the sexually-oriented establishment is located to the property line of the following:

- (1) R District or an "R" use;
- (2) Agricultural land located in the neighboring township or in the city that is designated in the comprehensive plan for residential use;
- (3) A licensed day care center;
- (4) A public or private school;
- (5) A public library;
- (6) A public park;
- (7) A church; or
- (8) Amusement places such as roller rinks, dance halls and bowling alleys.

(C) Sexually-oriented establishments shall be located at least 600 radial feet apart as measured from property line to property line.

(D) Each sexually-oriented establishment is a separate use and no two sexually-oriented establishments shall be located in the same building or upon the same property and each use shall be subject to the regulations contained herein.

(E) Except as otherwise provided herein, the provisions of §§ 153.430 through 153.438 and §§ 150.105 through 150.110 shall apply to all signs for sexually-oriented establishments. Sexually-oriented establishments shall adhere to the following sign regulations.

- (1) All signs shall be wall signs. No electronic changeable copy or electronic graphic display signs are permitted.
- (2) The gross area of all wall signs shall be limited to the maximum gross area permitted for a sign in the R District.
- (3) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk in front of the building.
- (4) Window areas shall not be covered or made opaque in any way, but no sexually-oriented materials or sexually-oriented uses shall be visible from the sidewalk in front of the building. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state the hours of operation and admittance to adults only.

- (5) Sign messages shall be generic in nature and shall only identify the type of business which is being conducted.
 - (F) Sexually-oriented establishments shall be prohibited in establishments where alcoholic beverages are served.
 - (G) Sexually-oriented establishments shall be prohibited at anyplace where minors are permitted or may be present.
 - (H) A sexually-oriented business must comply with the requirements of § 111.08 of this code of ordinances.
- (Ord. passed 10-11-1963)

§ 153.459 EXCEPTIONS.

This subchapter does not regulate the following:

- (A) Material with significant literary content or social commentary;
 - (B) A business where sexually-oriented materials are sold, bartered, distributed, leased, furnished or otherwise provided for off-site use or entertainment, if the sexually-oriented material on each item is blocked from view by an opaque cover as required by Minn. Stat. § 617.293, as it may be amended from time to time, and each item is in an area accessible only by an employee of the business;
 - (C) A person or organization exempted under Minn. Stat. § 617.295, as it may be amended from time to time;
 - (D) Activity under Minn. Stat. § 617.202, as it may be amended from time to time;
 - (E) Displaying of works of art showing specified anatomical areas, so long as no sexually-oriented materials are for sale and the business does not have a liquor license; or
 - (F) Movies rated G, PG, PG-13, NC-17 or R.
- (Ord. passed 10-11-1963)

STORMWATER MANAGEMENT

§ 153.470 POLICY.

- (A) The purpose of this subchapter is to control or eliminate stormwater pollution along with soil erosion and sedimentation within the city.
- (B) It establishes standards and specifications for conservation practices and planning activities, which minimize stormwater pollution, soil erosion and sedimentation.
- (C) Except where an exception is granted, any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision proposing a land disturbance activity within the city shall apply to the city for the approval of the stormwater pollution prevention plan or stormwater pollution control plan.
- (D) No land shall be disturbed until the plan is approved by the city and conforms to the standards set forth herein.

(Ord. passed 10-11-1963)

§ 153.471 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall 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 tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "must" are always mandatory and not merely directive.

ACTIVE KARST. Geographic areas underlain by carbonate bedrock (or other forms of bedrock that can erode or dissolve) with less than 50 feet of sediment cover.

APPLICANT. Any person or entity that applies for a building permit, subdivision approval or a permit to allow land disturbing activities. **APPLICANT** also means that person's agents, employees and others acting under this person's direction.

BEST MANAGEMENT PRACTICES (BMP). Practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practices, and also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

BUFFER. A protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Acceptable **BUFFER** vegetation includes preserving existing predevelopment vegetation and/or planting locally distributed native Minnesota trees, shrubs and grassy vegetation. Alteration of those areas is strictly limited.

COMMON PLAN OF DEVELOPMENT OR SALE. A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

CONSTRUCTION ACTIVITY. Includes construction activity as defined in 40 C.F.R. § 122.26(b)(14)(x) and small construction activity as defined in 40 C.F.R. § 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling and excavating. **CONSTRUCTION ACTIVITY** includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

DEVELOPER. A person, firm, corporation, sole proprietorship, partnership, state agency or political subdivision thereof engaged in a land disturbance activity.

DEWATERING. The removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. **DEWATERING** may require a Minnesota Department of Natural Resources water appropriation permit and, if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.

DISCHARGE. The conveyance, channeling, runoff or drainage, of stormwater, including snowmelt, from a construction site.

ENERGY DISSIPATION. This refers to methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to; aprons, riprap, splash pads and gabions that are designed to prevent erosion.

EROSION. Any process that wears away the surface of the land by the action of water, wind, ice or gravity. **EROSION** can be accelerated by the activities of people and nature.

EROSION CONTROL. Refers to methods employed to prevent erosion. Examples include soil stabilization practices, limited grading, temporary erosion protection or permanent cover and construction phasing.

EROSION AND SEDIMENT PRACTICE SPECIFICATIONS OR PRACTICE. The management procedures, techniques and methods to control soil erosion and sedimentation as officially adopted by either the city, county or local watershed group, whichever is more stringent.

EXPOSED SOIL AREAS. All areas of the construction site where the vegetation (trees, shrubs, brush and the like) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include stockpiles or surcharge areas of sand, gravel, concrete or bituminous.

FILTER STRIPS. A vegetated section of land designed to treat runoff as overland sheet flow. They may be designed in any natural vegetated form from a grassy meadow to a small forest. Their dense vegetated cover facilitates pollutant removal and infiltration.

FINAL STABILIZATION. Required actions as defined in the NPDES/SDS general stormwater permit for construction activity taken after the completion of construction activities and prior to submitting the notice of termination that are intended to prevent discharge of pollutants associated with stormwater discharges from the project.

GRADING PERMIT. A written warrant or license granted by the city to allow land disturbance activities.

GREEN INFRASTRUCTURE. A wide array of practices at multiple scales that manages wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring or harvesting and using stormwater. On a regional scale, **GREEN INFRASTRUCTURE** is the preservation or restoration of natural landscape features such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale, **GREEN**

INFRASTRUCTURE consists of site and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.

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.

IMPAIRED WATER. All bodies of water that are listed on the Minnesota Pollution Control Agency's List of Impaired Waters.

IMPERVIOUS SURFACE.

(1) A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development.

(2) Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas and concrete, asphalt or gravel roads.

LAND DISTURBANCE ACTIVITY.

(1) Any activity or activities on a site that may result in soil erosion from water or wind. It shall also mean any movement of sediments upon lands or into or upon waters within the city's jurisdiction, including construction, clearing and grubbing, grading, excavating, transporting and filling of land.

(2) Within the context of this rule, **LAND DISTURBANCE ACTIVITY** does not mean:

(a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work;

(b) Construction, installation and maintenance of electric, telephone and cable television, utility lines or individual service connection to these utilities, which result in creating less than 5,000 square feet of exposed soil;

(c) Tilling, planting or harvesting of agricultural, horticultural or silvicultural crops;

(d) Installation of fence, sign, telephone and electric poles and other kinds of posts or poles that result in creating less than 5,000 square feet of exposed soil;

(e) Emergency work to protect life, limb or property and emergency repairs, unless the land disturbing activity would have required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the city's requirements as soon as possible; or

(f) Any activity that, in the discretion of the city, should be exempt from the provisions of this section. The city may exempt an activity from the provisions of this section if all of the following standards and requirements are met:

1. Existing draining and ponding patterns are not significantly altered so as to adversely affect adjoining land;

2. The resultant grade and slopes at the property line are in substantial conformity to the surrounding natural topography and are set so as to minimize erosion and provide for sufficient drainage so that both natural and stormwater enter and leave the property at the original or natural drainage points;

3. All banks will be left with a slope not greater than one foot vertical to four foot horizontal, except that greater slope shall be permitted if it is in substantial conformity to the immediately surrounding area, and in the judgment of the city, it is not expected to adversely affect future development of the site. All excavated areas shall be finally graded in substantial conformity to the surrounding natural topography; and

4. The property is or will be graded so that stagnant water will not be permitted to collect upon it.

MAXIMUM EXTENT PRACTICABLE or **MEP.** The statutory standard (33 U.S.C. § 1342(p)(3)(B)(iii)) that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The U.S. Environmental Protection Agency (USEPA) has intentionally not provided a precise definition of **MEP** to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent **MEP** may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures (MCMs) through an evaluative process. The USEPA envisions application of the **MEP** standard as an iterative process.

MS4. Municipal Separate Storm Sewer System.

NATURAL BUFFER. An area of undisturbed cover surrounding surface waters within which construction activities are restricted. Natural buffer includes the vegetation, exposed rock or barren ground that exists prior to commencement of earth-disturbing activities.

NPDES/SDS GENERAL STORMWATER PERMIT FOR CONSTRUCTION ACTIVITY. The National Pollutant Discharge Elimination System/State Disposal System general stormwater permit for construction activity as required by the Minnesota Pollution Control Agency.

NEW DEVELOPMENT. All construction activity that is not defined as redevelopment.

NON-STORMWATER DISCHARGE. Any discharge not composed entirely of stormwater.

NOTICE OF TERMINATION or **NOT.** Notice to terminate coverage under this permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.

OWNER(S). A natural person, partnership, firm, association, public or quasi-public corporation, private corporation, or a combination of, with a legal or equitable interest in the parcel of record.

PAVED SURFACE. A constructed hard, smooth surface made of asphalt, concrete or other pavement material. Examples include, but are not limited to, roads, sidewalks, driveways and parking lots.

PERMANENT COVER. Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (i.e., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. **PERMANENT COVER** does not include the practices listed under temporary erosion protection.

PERMITTEE. Any person, entity or group that applies to the city for a building permit, subdivision approval, or a grading permit. **PERMITTEE** also means that person or entity's agents, employees, contractors, subcontractors and others acting under the person, entity or group's direction.

RECEIVING WATER. Any lake, river, stream or wetland that receives stormwater discharges from an MS4.

REDEVELOPMENT. Any construction activity where, prior to the start of construction, the areas to be disturbed have 15% or more of impervious surface(s).

RUNOFF COEFFICIENT. The average annual fraction of total precipitation that is not infiltrated into or otherwise retained by the soil, concrete, asphalt or other surface upon which it falls that will appear at the conveyance as runoff.

SATURATED SOIL. The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. **SATURATED SOIL** is evidenced by the presence of redoximorphic features or other information.

SEDIMENT. The product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air or ice, and has come to rest on the earth's surface either above or below water level.

SEDIMENTATION. The process or action of depositing sediment caused by erosion.

SEDIMENT CONTROL. The methods employed to prevent sediment from leaving the development site. **SEDIMENT CONTROL** practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins. A floating silt curtain placed in the water is not a sediment control BMP to satisfy perimeter control requirements, except as provided for in the NPDES/SDS general stormwater permit for construction activity.

SIGNIFICANT MATERIALS. Includes, but is not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); fertilizers, pesticides and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges. When determining whether a material is significant, the physical and chemical characteristics of the material should be considered (e.g., the material's solubility, transportability and toxicity characteristics) to determine the material's pollution potential (40

SOIL. The unconsolidated mineral and organic material on the immediate surface of the earth. For the purposes of this document stockpiles of sand, gravel, aggregate, concrete or bituminous materials are not considered **SOIL** stockpiles.

STABILIZE, STABILIZED, STABILIZATION. The exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90% ground coverage (typically two tons/acre).

STORMWATER. Any precipitation runoff, stormwater runoff, snow melt off and any other surface runoff and drainage as defined by Minn. R. 7090.0080, subp.12.

STORMWATER POLLUTION CONTROL PLAN. A joint stormwater and erosion and sediment control plan that is a document containing the requirements of § 153.473, that when implemented will decrease soil erosion on a parcel of land and off-site nonpoint pollution and sediment damages.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP). A joint stormwater and erosion and sediment control plan that is a document containing the requirements of § 153.472, that when implemented will decrease soil erosion on a parcel of land and off site nonpoint pollution and sediment damages.

STRUCTURAL STORMWATER BMP. A stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

SUBDIVISION. Any tract of land divided into building lots for private, public, commercial, industrial and the like development. Minnesota Rule 6120.2500, subpart 17 defines a **SUBDIVISION** as land that is divided for the purpose of sale, rent or lease, including planned unit development.

SURFACE WATER OR WATERS. All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

TEMPORARY EROSION PROTECTION. Methods employed to prevent erosion during construction activities. Examples of **TEMPORARY EROSION PROTECTION** include, but are not limited to: straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

TP. Total phosphorus.

TSS. Total suspended solids.

URBAN. Of, relating to or characteristic of constituting a city.

VEGETATED OR GRASSED SWALES. A vegetated earthen channel that conveys stormwater, while treating the stormwater by biofiltration. The swales remove pollutants by both filtration and infiltration.

WATERS OF THE STATE. As defined in Minn. Stat. § 115.01(22), as it may be amended from time to time, the term means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

WATER POLLUTION.

(1) The discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or

(2) The alteration made or induced by human activity of the chemical, physical, biological or radiological integrity of waters of the state as defined by Minn. Stat. § 115.01, Subd. 13, as it may be amended from time to time.

WET DETENTION FACILITY. A permanent man-made structure for the temporary storage of runoff that contains a permanent pool of water.

WETLAND or WETLANDS.

(1) As defined in Minn. Rules 7050.0130, subpart F, **WETLANDS** are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) **WETLANDS** generally include swamps, marshes, bogs and similar areas.

(3) Constructed **WETLANDS** designed for wastewater treatment are not waters of the state.

(4) **WETLANDS** must have the following attributes:

(a) A predominance of hydric soils;

(b) Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and

(c) Under normal circumstances support a prevalence of the vegetation.

(Ord. passed 10-11-1963)

§ 153.472 STORMWATER POLLUTION PREVENTION PLAN (SWPPP).

(A) Any applicant proposing a land disturbance activity within the city that is one acre or greater or proposes a common plan development of sale that disturbs greater than one acre, shall apply to the city for a grading permit and shall submit a grading plan and a SWPPP with the application. No land shall be disturbed until the grading and SWPPP is approved by the city engineer and the grading permit is issued. At a minimum, the applicant's SWPPP must include all items as required by the most current version of the NPDES general stormwater permit for construction activity, including but not limited to:

(1) BMPs to minimize erosion;

(2) BMPs to minimize discharge of sediment and other pollutants;

(3) BMPs for dewatering activities;

(4) Site inspections and records of rainfall events;

(5) BMP maintenance;

(6) Management of solid and hazardous waste on each project site;

(7) Final stabilization upon the completion of construction activity; and

(8) Criteria for the use of temporary sedimentation basins.

(B) *Site inspections.* Inspections will be conducted in accordance with the requirements of the NPDES general stormwater permit for construction activity.

(C) *Post-construction stormwater management.* Post-construction management applies to new development and redevelopment projects with land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale.

(1) The permittee shall use permanent structural best management practices in order to achieve the applicable minimum control requirements as specified by the most current version of the NPDES/SDS Municipal Separate Storm Sewer (MS4) permit. The permittee shall use any combination of BMPs, with the highest preference given to green infrastructure techniques and practices necessary to meet the following conditions to the maximum extent practicable (MEP):

(a) There must be no net increase from pre-project conditions on an annual average basis of stormwater discharge volume, stormwater discharges of total suspended solids (TSS) and total phosphorus (TP) for new development projects.

(b) There must be a net reduction from pre-project conditions, on an annual average basis, of stormwater discharge volume, stormwater discharges of TSS and TP for redevelopment projects.

(2) The permittee is prohibited from using infiltration techniques to achieve the conditions in § 153.472(C)(1)(a) and (b) when the infiltration stormwater BMP will receive discharges from or be constructed in areas:

(a) Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit issued by the Agency.

(b) Where vehicle fueling and maintenance occur.

(c) 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.

(d) Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.

(3) Infiltration techniques are prohibited, without higher engineering review, sufficient to provide a functioning treatment system and prevent adverse impacts to groundwater, when the infiltration device will be constructed in areas:

(a) With predominately Hydrologic Soil Group D (clay) soils.

(b) Within 1,000 feet up-gradient, or 100 feet down-gradient of active karst features.

(c) Within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. Rule 4720.5100, subp. 13.

(d) Where soil infiltration rates are more than 8.3 inches per hour.

(4) For linear projects where the lack of right-of-way precludes the installation of volume control practices that meet the conditions for post-construction stormwater management in § 153.472(C)(1)(a) and (b), the permittee must meet the requirements of § 153.472(C)(5).

(5) The City Engineer or designee may allow for a lessor stormwater volume control than the requirements contained in § 153.472(C)(1)(a) and (b) under the following circumstances:

(a) The permittee is unable to infiltrate stormwater through a designed system due to the infiltration related limitations outlined in § 153.472(C)(2) or (3); or

(b) The permittee implements volume reduction techniques to the MEP, other than infiltration, (e.g., evapotranspiration, reuse/harvesting, conservation design, green roofs, etc.) on the site of the original construction activity that reduces stormwater discharge volume, but may not meet the conditions for post-construction stormwater management in § 153.472(C)(1)(a) and (b).

(6) The City Engineer may permit a permittee to mitigate TSS and TP requirements outlined in § 153.472(C)(1)(a) and (b), if the permittee cannot cost effectively meet the requirements on the site of the original construction activity. The City Engineer will designate the location of the mitigation project. The mitigation project must involve the creation of new structural stormwater BMP or the retrofit of an existing structural stormwater BMP, or the use of a properly designed regional structural stormwater BMP. Routine maintenance of structural stormwater BMPs required by the MS4 permit cannot be used to meet mitigation requirements of § 153.472(C)(1)(a) and (b). The mitigation project shall be completed within 24 months after the start of the original construction activity.

(7) Mitigation projects must be completed to the MEP 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 Department of Natural Resource (DNR) catchment area as the original construction activity;

(c) Locations in the next adjacent DNR catchment area up-stream; and

(d) Locations anywhere within the permittee's jurisdiction.

(8) The permittee, upon approval by the city, may elect to make a payment in lieu of a private mitigation project, as outlined in § 153.472(C)(1), as funding for a public stormwater project. The payment will be used to meet the TP and TSS requirements of § 153.472(C)(1)(a) and (b) utilizing the same criteria in § 153.472(C)(7).

(9) Long-term inspection and maintenance plans for privately-owned permanent stormwater management facilities are required. They must be submitted with the grading permit application and SWPPP to the city for review and approval.

(10) The owners of private stormwater structural BMPs, constructed after August 1, 2013, to meet the requirements of § 153.472(C)(1)(a) and (b), and are directly connected to the city's MS4 are responsible for the long term operations and maintenance of the BMP. The owner shall allow the city engineer upon presentation of credentials, to access to the site at all times in accordance with the provisions of § 153.479. The city may assess the owner for maintenance costs if the owner fails to complete the required maintenance. The city may also direct the owner to modify, reconstruct or construct a new structural stormwater BMP, if the current structural BMP fails to meet the requirements of § 153.472(C)(1)(a) and (b). The city may assess the engineering and construction

costs to the owner.

§ 153.473 STORMWATER POLLUTION CONTROL PLAN.

Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities that do not meet the threshold of § 153.472 must submit a stormwater pollution control plan to the city at the time of application. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until the city approves this plan. At a minimum these pollution abatement control practices must conform to those in the current version of the State Pollution Control Agency's publication, *Protecting Water Quality in Urban Areas*.

(A) *General policy on stormwater runoff rates.* Stormwater runoff rates must not increase over the predevelopment two-year, ten-year and 100-year peak storm discharge rates, based on the last ten years of how that land was used. Also, accelerated channel erosion must not occur as a result of the proposed activity.

(B) *The stormwater pollution control plan and the grading plan.* The stormwater pollution control plan's measures, the limit of disturbed surface and the location of buffer areas shall be marked on the approved grading plan, and identified with flags, stakes, signs and the like on the development site before work begins.

(C) *Inspections of the Stormwater Pollution Control Plan measures.* At a minimum, such inspections shall be done weekly and after every storm event that is large enough to result in run off from the site by either the developer or the developer's designated representative.

(D) *Minimum requirements of the stormwater pollution control plan.* The Stormwater Pollution Control Plan shall be prepared and signed by a licensed professional engineer and shall contain the following information:

- (1) The name and address of the applicant and the location of the activity;
- (2) Project description: the nature and purpose of the land disturbing activity and the amount of grading, utilities and building construction involved;
- (3) Phasing of construction: time frames and schedules for the project's various aspects;
- (4) A map of the existing site conditions: existing topography, property information, steep slopes, existing drainage systems/patterns, type of soils, waterways, wetlands, vegetative cover, 100- year floodplain boundaries and locations of existing and future buffer strips;
- (5) A site construction plan that includes the location of the proposed land disturbing activities, stockpile locations, erosion and sediment control plan, construction schedule and the plan for the maintenance and inspections of the stormwater pollution control measures;
- (6) Adjacent areas: neighboring streams, lakes, residential areas, roads and the like, which might be affected by the land disturbing activity;
- (7) The site's areas that have the potential for serious erosion problems;
- (8) Erosion and sediment control measures: the methods that will be used to control erosion and sedimentation on the site, both during and after the construction process;
- (9) Permanent stabilization: how the site will be stabilized after construction is completed, including specifications, time frames or schedules; and
- (10) Calculations: any that were made for the design of such items as sediment basins, wet detention basins, diversions, waterways, infiltration zones and other applicable practices.

(E) *General stormwater pollution control plan criteria.* The plan shall address the following:

- (1) Stabilizing all exposed soils and soil stockpiles and the related time frame or schedule;
- (2) Establishing permanent vegetation and the related time frame or schedule;
- (3) Preventing sediment damage to adjacent properties and other designated areas such as streams, wetlands, lakes and unique vegetation (e.g., oak groves, rare and endangered species habitats);

- (4) Scheduling for erosion and sediment control practices;
- (5) Where permanent and temporary sedimentation basins will be located;
- (6) Engineering the construction and stabilization of steep slopes;
- (7) Measures that will control the quality and quantity of stormwater leaving a site;
- (8) Stabilizing all waterways and outlets;
- (9) Protecting storm sewers from the entrance of sediment;
- (10) What precautions will be taken to contain sediment when working in or crossing water bodies;
- (11) Restabilizing utility construction areas as soon as possible;
- (12) Protecting public roads from sediment and mud carried from the site by construction and other traffic;
- (13) Disposing of temporary erosion and sediment control measures;
- (14) How the temporary and permanent erosion and sediment control practices will be maintained; and
- (15) How collected sediment and floating debris will be disposed.

(F) *Minimum stormwater pollution control measures and related inspections.* The following minimum control measures are required where bare soil is exposed; (due to the diversity of individual construction sites, each site will be individually evaluated; where additional control measures are needed, they will be specified at the discretion of the city; the city will determine what action is necessary to prevent excessive erosion from occurring on the site):

- (1) All grading plans and building site surveys must be reviewed by the city for effectiveness of erosion control measures in the context of the site topography and drainage;
- (2) Sediment control measures must be properly installed by the builder before construction activity begins. The structures may be adjusted during dry weather to accommodate short-term activities, such as those that require very large vehicles. As soon as this activity is finished or before rainfall, the erosion and sediment control structures must be returned to the configuration specified by the city. A sediment control inspection must then be scheduled, and passed before a footing inspection will be done;
- (3) Diversion of channeled runoff around disturbed areas, if practical, or the protection of the channel;
- (4) If a stormwater management plan involves directing some or all of the site's runoff, the applicant or his or her designated representative shall obtain from adjacent property owners any necessary easements or other property interests concerning the flowing of the water;
- (5) The scheduling of the site's activities to lessen their impact on erosion and sediment creation;
- (6) Minimize amount of exposed soil; and
- (7) Control runoff as follows: Unless precluded by moderate or heavy snow cover (mulching can take place if a light snow cover is present), stabilize all exposed inactive disturbed soil areas within 100 feet of any water of the state, or within 100 feet any conveyance (curb, gutter, storm sewer inlet, drainage ditch and the like) to a water of the state with sod, seed or weed free mulch. This must be done if the developer will not work the area for seven days on slopes greater than three feet horizontal to one foot vertical (3:1), 14 days on slopes ranging from 3:1 to 10:1 and 21 days for flatter slopes.
- (8) Generally, sufficient silt fence will be required to hold all sheet flow runoff generated at an individual site, until it can either infiltrate or seep through silt fence's pores.
- (9) Temporary stockpiling of 50 or more cubic yards of excess soil on any lot or other vacant area may require a grading permit for the earth moving activity in question.
- (10) For soil stockpiles greater than ten cubic yards the toe of the pile must be more than 25 feet from a road, drainage channel and stormwater inlet or property line. If for any reason a soil stockpile of any size is located closer than 25 feet from a road, drainage channel, stormwater inlet or property line, and left for more than seven days, it must be covered with tarps or controlled in some other manner.
- (11) All sand, gravel or other mining operations taking place on the development site shall have a national pollutant discharge

elimination system general stormwater permit for industrial activities and all required State Department of Natural Resources permits.

(12) Temporary rock construction entrances may be required wherever vehicles enter and exit a site.

(13) Parking is prohibited on all bare lots and all temporary construction entrances, except where street parking is not available.

(14) Public Streets must be cleaned and swept whenever tracking of sediments occurs and before sites are left idle for weekends and holidays. Establishment of a regular sweeping schedule is encouraged.

(15) Water, impacted by the construction activity, that is being removed from the site by pumping must be treated by temporary sedimentation basins, geotextile filters, grit chambers, sand filters, up-flow chambers, hydro-cyclones, swirl concentrators or other appropriate controls. The water shall not be discharged in a manner that causes erosion or flooding of the site, receiving channels, adjacent property or a wetland.

(16) All storm drain inlets must be protected during construction until control measures are in place with either silt fence or an equivalent barrier that meets accepted design criteria, standards and specifications of the State Pollution Control Agency.

(17) Catch basins; all newly installed and rehabilitated catch basins must be provided with a sump area for collecting coarse-grained material, when required by the city. The basins must be cleaned when they are half filled with material.

(18) Roof drain leaders; if possible, all newly constructed and reconstructed buildings must route roof drain leaders to pervious areas (not natural wetlands) where the runoff can infiltrate. The discharge rate shall be controlled so that no erosion occurs in the pervious areas.

(19) Follow-up inspections must be performed by the developer or subsequent owner on a regular basis to ensure that erosion and sediment control measures are properly installed and maintained. In cases where cooperation is withheld, construction stop orders may be issued by the city, until erosion and sediment control measures meet specifications. A second erosion and sediment control/grading inspection must then be scheduled and passed before the final inspection will be done.

(20) Inspection and maintenance: all stormwater pollution control management facilities must be designed to minimize the need of maintenance, to provide easy vehicle and personnel access for maintenance purposes and be structurally sound. These facilities must have a plan of operation and maintenance that ensures continued effective removal of the pollutants carried in stormwater runoff. The city or its designated representative shall inspect all stormwater management facilities during construction. Thereafter, the developer or subsequent owner shall inspect at least once every five years. The developer or subsequent owner will keep all inspection records on file for a period of six years.

(G) *Permanent stormwater pollution controls.*

(1) The applicant shall install or construct, or pay the city fees for all stormwater management facilities necessary to manage increased runoff, so that the two-year, ten-year and 100-year peak storm discharge rates existing before the proposed development, are not increased. These predevelopment rates shall be based on the last ten years of how that land was used. Accelerated channel erosion must not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or a monetary contribution to the development and maintenance of community stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.

(2) All calculations and information used in determining these peak storm discharge rates shall be submitted along with the stormwater pollution control plan.

(3) The applicant shall consider reducing the need for stormwater management facilities by incorporating the use of natural topography and land cover such as natural swales and depressions as they exist before development to the degree that they can accommodate the additional flow of treated (e.g., settled) water without compromising the integrity or quality of the wetland or pond.

(4) The following stormwater management practices must be investigated in developing the stormwater management part of the stormwater pollution control plan in the following descending order of preference:

(a) Protect and preserve as much natural or vegetated area on the site as possible, minimizing impervious surfaces, and directing runoff to vegetated areas rather than to adjoining streets, storm sewers and ditches;

(b) Flow attenuation by use of open vegetated swales and natural depressions;

(c) Stormwater wet detention facilities (including percolation facilities); and

(d) A combination of successive practices may be used to achieve the applicable minimum control requirements specified in division (G) above. The applicant shall provide justification for the method selected.

(H) *Minimum design standards for stormwater wet detention facilities.* At a minimum these facilities must conform to the most current technology as reflected in the current version of the State Pollution Control Agency's publication, *Protecting Water Quality in Urban Areas* and the current requirements found in the same agency's NPDES permits for stormwater associated with construction activities.

(I) *Minimum protection for natural wetlands.*

(1) Runoff must not be discharged directly into wetlands without appropriate quality (i.e., treated) and quantity runoff control, depending on the individual wetland's vegetation.

(2) At the minimum, a 30-foot wide protective buffer strip of predevelopment vegetation, if possible, shall surround all wetlands. The buffer strip's width shall be increased at least four feet for every 1% of slope of the surrounding land. The city may choose to extend the size of the buffer strip to protect sensitive wetlands from degradation.

(a) Detailed buffer design is usually site specific. Therefore the city can require a larger buffer than the minimum.

(b) For newly constructed buffer sites the design criteria should follow common principles and the example of nearby natural areas. The site should be examined for existing buffer zones and mimic the nearby slope structure and vegetation as much as possible. Buffer design and protection during construction should do any or all of the following: slow water runoff, trap sediment, enhance water infiltration, trap fertilizers, pesticides, pathogens, heavy metals, trap blowing snow and soil, and act as corridors for wildlife. How much stress is put on these functions will determine the buffer zone's final configuration.

(c) The applicant or developer or subsequent owner shall maintain the buffer strip for the first year.

(d) Because drain tiles will short-circuit the benefits of vegetated buffer strips, drain tiles on the development site should be identified and rendered inoperable.

(e) Buffer strips may be made into perpetual conservation easements.

(3) Wetlands must not be drained or filled, wholly or partially, unless replaced by either restoring or creating wetland areas of at least equal public value. Compensating for the impact by replacing or providing substitute wetland resources or environments with those of at least equal public value. Compensation, including the replacement ratio and quality of replacement should be consistent with the requirements outlined in the rules adopted by the Board of Water and Soil Resources.

(4) Work in and around wetlands must be guided by the following principles in descending order of priority:

(a) Avoid the direct or indirect impact of the activity that may destroy or diminish the wetland;

(b) Minimize the impact by limiting the degree or magnitude of the wetland related activity and its implementation;

(c) Rectify the impact by repairing, rehabilitating or restoring the affected wetland environment with one of at least equal public value; and

(d) Reduce or eliminate the adverse impact over time by preservation and maintenance operations during the life of the activity.

(J) *Models/methodologies/computations.* Hydrologic models and design methodologies used for the determining runoff characteristics and analyzing stormwater management structures must be approved by the city. Plans, specifications and computations for stormwater management facilities submitted for review must be sealed and signed by a licensed professional engineer. All computations must appear in the plans submitted for review, unless otherwise approved by the city.

(Ord. passed 10-11-1963)

§ 153.474 REVIEW.

The city shall review the SWPPP or stormwater pollution control plan.

(A) *Permit required.* If the city determines that the stormwater pollution control plan meets the requirements of this chapter, the city shall issue a permit valid for a specified period of time, which authorizes the land disturbance activity contingent on the implementation and completion of the submitted plan.

(B) *Denial.* If the city determines that the SWPPP or stormwater pollution control plan does not meet the requirements of this chapter, the city shall not issue a permit for the land disturbance activity. All land use and building permits for the site in question must

be suspended until the developer has an approved stormwater pollution control plan.

(Ord. passed 10-11-1963)

§ 153.475 MODIFICATION OF PLAN.

An approved stormwater pollution control plan may be modified on submission of a written application for modification to the city, and after written approval by the city. In reviewing such an application, the city may require additional reports and data. The city shall retain the written records in accordance with the Minnesota Pollution Control Agency's Municipal Separate Sewer System NPDES/SDS general permit.

(Ord. passed 10-11-1963)

§ 153.476 FINANCIAL SECURITIES.

(A) Generally.

(1) The applicant shall provide security for the performance of the work described and delineated on the approved grading plan involving the stormwater pollution control plan and any stormwater and pollution control plan related remedial work in an amount of \$3,000 per gross acre or \$1,000 for each single- or two-family home, whichever is greater.

(2) This security must be available prior to commencing the project.

(3) The form of the securities shall adhere to the following.

(a) The first \$3,000 (in U.S. currency) or 15%, whichever is greater, of this financial security must be by cash deposit to the city.

(b) Deposit with the city, a responsible escrow agent or trust company, at the option of the city, money, an irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein the financial institution pledges that the funds are on deposit and guaranteed for payment. The type of security must be of a type acceptable by the city.

(c) The city may request a greater financial security, if the city considers that the development site is especially prone to erosion or the resource to be protected is especially valuable.

(B) Maintaining the financial security.

(1) If at anytime during the course of the work this amount falls below 50% of the required deposit, the developer shall make another deposit in the amount necessary to restore the deposit to the required amount.

(2) If the developer does not bring the financial security back up to the required amount within seven days after notification by the city that the amount has fallen below 50% of the required amount, the city may:

(a) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy; and/or

(b) Revoke any permit issued by the city to the applicant for the site in question.

(C) *Proportional reduction of the financial security.* When more than half of the development's exposed soil area achieves final stabilization, the city may reduce the total required amount of the financial security by half, if recommended by the City Engineer.

(D) Action against the financial security.

(1) The city may act against the financial security if any of the conditions listed below exist.

(2) The city shall use funds from this security to finance remedial work undertaken by the city or a private contractor under contract to the city and to reimburse the city for all direct cost incurred in the process of remedial work including, but not limited to, staff time, attorney's fees, consulting fees and any other fees related thereto.

(a) The developer ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.

(b) The developer fails to conform to the grading plan and/or the SWPPP and/or the stormwater pollution control plan as approved by the city.

(c) The techniques utilized under the SWPPP or stormwater pollution control plan fail within one year of installation.

(d) The developer fails to reimburse the city for corrective action taken under § 153.477.

(E) *Returning the financial security.* Any unspent amount of the financial security deposited with the city for faithful performance of the SWPPP or stormwater pollution control plan and any SWPPP or stormwater and pollution control plan related remedial work must be released six months after the completion of the installation of all stormwater pollution control measures as shown on the grading and/or the stormwater pollution control plan and establishment of final stabilization.

(Ord. passed 10-11-1963)

§ 153.477 NOTIFICATION OF FAILURE OF THE SWPPP OR STORMWATER POLLUTION CONTROL PLAN.

The city shall notify the developer when the city is going to act on the financial securities part of this chapter.

(A) *Notification by the city.* The initial contact will be to a party or parties listed on the application and/or the stormwater pollution control plan. Forty-eight hours after notification by the city or 72 hours after the failure of erosion control measures, whichever is less, the city, at its discretion, may begin corrective work.

(B) *Erosion off-site.*

(1) If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the 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.

(2) In no case, unless written approval is received from the city, shall more than seven calendar days go by without corrective action being taken.

(3) If in the discretion of the city, the applicant does not repair the damage caused by the erosion, the city may do the remedial work required and charge the cost to the applicant.

(C) *Erosion into streets, wetlands or water bodies.*

(1) If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands or other water bodies, prevention strategies, cleanup and repair must be immediate.

(2) The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

(D) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the city may take the following actions:

(1) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy;

(2) Revoke any permit issued by the city to the applicant for the site in question;

(3) Direct the correction of the deficiency by city forces or by a separate contract. The issuance of a permit constitutes a right-of-entry for the city or its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control;

(4) All costs incurred by the city in correcting stormwater pollution control deficiencies must be reimbursed by the applicant. If payment is not made within 30 days after costs are incurred by the city, payment will be made from the applicant's financial securities as described in § 153.476; and

(5) If there is an insufficient financial amount, in the applicant's financial securities as described in § 153.476, to cover the costs incurred by the city, then the city may assess the remaining amount against the property.

(Ord. passed 10-11-1963)

§ 153.478 EXCEPTIONS.

In any case where, upon application of the responsible person or persons, the city finds that by reason of exceptional circumstances strict conformity with this chapter would be unreasonable, impractical or not feasible under the circumstances; the city in its discretion may grant an exception therefrom upon such conditions as it may prescribe for prevention, control or abatement of pollution in harmony with the general purposes of this chapter.

(Ord. passed 10-11-1963)

§ 153.479 RIGHT OF ENTRY AND INSPECTION.

The applicant shall allow the city and its authorized representatives, upon presentation of credentials to:

- (A) Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, surveys or investigations;
- (B) Bring the equipment upon the permitted development as is necessary to conduct the surveys and investigations;
- (C) Examine and copy any books, papers, records or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site;
- (D) Inspect the stormwater pollution control measures required by the city; and
- (E) Sample and monitor any items or activities pertaining to permits issued by the city.

(Ord. passed 10-11-1963)

§ 153.480 ABROGATION AND GREATER RESTRICTIONS.

It is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

(Ord. passed 10-11-1963)

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TABLE OF SPECIAL ORDINANCES

Table

I. EASEMENTS

II. FRANCHISES

III. VACATIONS

IV. ZONING MAP CHANGES

TABLE I: EASEMENTS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
15-07	8-24-2015	Providing for the vacation of a drainage and utility easement.
15-16	12-15-2015	Providing for the vacation of a drainage and utility easement.

TABLE II: FRANCHISES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
16-04	2-23-2016	Granting a franchise to QWEST Broadband Services, Inc. D/B/A Centurylink to construct, operate, and maintain a competitive cable communications system.

TABLE III: VACATIONS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
16-11	8-22-2016	Vacating a right-of-way located on Allen Avenue as described in Exhibit A of Ord. 16-11.

TABLE IV: ZONING MAP CHANGES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
		Rezoning property located at

14-02	3-24-2014	1603-1626 Robert Street from B-6, Town Center Mixed Use District to PD, Planned Development with B-6, Town Center Mixed Use underlying zoning; and rezoning property located at 1654 Livingston from B-3, General Business to PD, Planned Development, with B6, Town Center District underlying zoning.
14-10	11-24-2014	Rezoning property located at 1214-1224 Robert Street from B-3, General Business District to PD, Planned Development with B-3, General Business District underlying zoning.
15-05	6-8-2015	Rezoning property located at 1746 Oak Dale Avenue from R-4, Multiple Family Residential District to PRD, Planned Residential Development with R-4, Multiple Family Residential underlying zoning.
15-10	10-12-2015	Rezoning property in proximity of Emerson Avenue and Summit Court, Aspen Court, Valley View Court, Ridge Way Drive, and Imperial Ridge from R-4, Multiple Family Residential to R-1, Single Family Residential.
16-03	3-14-2016	Rezoning property located at 1636 Delaware Avenue from C, Conservancy to R-1C, Single-Family Residential.
16-14	12-12-2016	Rezoning 260 Marie Avenue East from I-1, Light Industrial to PMD, Planned Multi-use Development with R-4, Multiple Family Residential underlying zoning.

REFERENCES TO MINNESOTA STATUTES

<i>Minn. Stat. Cites</i>	<i>Code Section</i>
12	30.01
13	30.05
15.73, Subd. 3	95.17
16B	150.003
18.77(8)	94.37
18.83, Subd. 2	94.37
18G.07	96.20
80A	111.07
84.81	73.01
84.82	73.01
84.87	73.01
84.88	73.01
84.89	73.01
84.90	73.01
84.871	73.01
84.872	73.01
88	91.06
89.01	96.20
89.001	96.20
89.51 through 89.64	96.20
97B.015	131.05
97B.091	73.01
101	93.06
103B.245	34.02
103F.201	153.413
103G.005(15)	153.004, 153.415
115.01, Subd. 13	153.471
115.01(22)	153.471
116.76 to 116.83	111.06

116L.361, Subd. 5	97.02
144A	153.004
144D	153.050, 153.114, 153.129, 153.145, 153.160, 153.175, 153.192, 153.210, 153.225, 153.239, 153.254
144.391	113.01
144.562	153.004
146B.03	111.06
146B.04	111.06
147	111.06
147A	111.06
147B	111.06
148	111.06
148.171 to 148.285	111.06
150A	111.06
151.40	130.03
151.40(2)	133.06
152	130.03, 133.06
152.01(4)	111.06
157.15(12)	112.03
168.27	111.05, 111.07
168B.01 through 168B.101	33.01, 33.02
169	70.01, 93.09
169.01	70.01
169.974	111.05
176.182	111.06
182	111.06
211B.20	150.037
216B, Subd. 4 and 6	95.17
216B.02	95.17
216B.02, Subd. 4 and 6	95.17
216D	95.20
216D.01 through 216D.09	95.35
237.16	95.15
237.79	95.15
237.81	95.15

237.162, Subd. 4	85.15, 95.17, 95.29
237.163	95.15, 95.17, 95.29
237.163, Subd. 2(b)	95.16
237.163, Subd. 6	95.41
238	95.17
238.02, Subd. 3	95.17
238.086	95.15
243.166	97.02, 97.03
243.167	97.03
245A.01 to 245A.16	153.004
252.28	153.004
253B	97.01
278.01 through 278.03	111.06
299F	91.01, 91.04, 153.332
299F.011(5)(a)	91.02
303.06	110.03
308A	95.17
325E.05	111.07
325E.06	111.07
325E.21	111.07
325F.733	111.07
325F.734 to 325F.742	111.07
326B	150.001
326B.121	150.003
326B.133	150.002
326B.148	150.003
327.31 through 327.35	153.004
329	111.09
329.15	111.09
333.01	110.03
333.02	111.04
340A	93.03, 93.10, 112.01, 133.07
340A.101(7)	112.03, 112.21
340A.101(25)	112.03
340A.308	112.23
340A.309	112.23

340A.404(4)(a)	112.03
340A.404(11)	112.06
340A.409	112.03
340A.409(1)	112.03
340A.414(2)	112.03
340A.414(9)	112.03
340A.504	112.06
340A.504(5)	112.03
347.50 to 347.565	90.05
347.51	90.05
347.52	90.05
347.52(a) and (c)	90.05
347.515	90.05
349.213	111.32
349.11 through 349.61	111.07
349A.01 through 349A.15	111.07
364.03(3)	111.06
364.06	30.05
364.09	30.05
366.011	34.01
366.012	34.01
412.221, Subd. 19	111.09
412.221(34)	153.434
415.01	34.01
415.13	150.110
429	10.98
429.061	94.01, 94.24
429.061 to 429.081	150.069
429.101	34.05, 94.01, 94.24
435.44	34.06
437.02	111.09
444.075	52.01
444.075(3)	50.07
453	95.17
453A	95.17
462.354	31.01
462.357(6)	153.027

462.357(8)	153.004
462.358(2)(b)	152.01
462.3593	150.125
462.3593, Subd. 9	150.125
463.15	94.15
463.15 through 463.26	34.05, 94.01
463.26	94.15
463.152	150.062
473.121(2)	111.08
473.121(24)	50.07
514.67	94.01
518.01	111.08
518B.01, Subd. 2(a)	150.041
518B.01, Subd. 2(b)	150.041
518B.01, Subd. 14	150.041
609	130.02
609.78(4)	34.16, 34.19
609.79	111.08
609.205(4)	90.05
609.224	111.08
609.226(1)	90.05
609.293 through 609.352	111.08
609.342	97.02
609.343	97.02
609.344	97.02
609.345	97.02
609.352	97.02
609.365	97.02
609.684	130.03
609.746 through 609.749	111.08
609.761	112.23
609.795	111.08
609.2242	111.08
617.23 through 617.299	111.08
617.23	97.02
617.202	111.08, 153.459
617.241	153.456

617.246	97.02
617.247	97.02
617.293	97.02, 111.08, 153.459
617.295	111.08, 153.459
624.711 through 624.717	131.04
626.862	10.17
631.48	10.99
645.44	10.04
645.45	10.04
802.28	95.21

REFERENCES TO 2001 CODE

<i>2001 Code</i>	<i>2016 Code</i>
105.01	10.04
105.03	10.04
120.01	10.98
120.03	10.98
120.09	10.98
120.11	10.98
120.13	10.98
120.15	10.98
120.17	10.98
200.01	30.03
200.03	30.04
305.03	31.03
330	33.03
400.01	150.001
400.03	150.002
400.05	150.003
400.07	150.004
400.09	150.005
410	150.006
415.01	150.105

415.05	150.106
415.07	150.107
415.09	150.108
415.11	150.109
420.01	150.085
420.03	150.086
420.05	150.087
420.07	150.088
420.09	150.089
420.11	150.090
435.03	150.036
435.05	150.037
435.07	150.038
435.09	150.039
435.11	150.040
435.13	150.042
435.15	150.043
435.17	150.044
435.19	150.045
435.21	150.046
450.01	151.01
450.03	151.02
450.05	151.03
450.07	151.04
450.09	151.05
450.11	151.06
450.13	151.07
450.15	151.08
450.19	151.09
600.01	92.01
600.03	111.13
600.05	92.03
600.07	92.04
600.11	92.06
600.13	92.07
600.15	92.08
600.19	92.10

605.01	111.01
700.01	50.01
700.02	50.02
700.03	50.03
700.05	50.04
700.07	50.05
700.09	50.06
700.11	50.07
700.20	50.08
710	34.07
715.01	51.01
715.03	51.02
715.05	51.03
725	34.02
730.01	52.01
730.03	52.02
730.05	52.03
730.07	52.04
730.11	52.05
730.13	52.06
805	111.02
810.01	95.01
810.03	95.02
810.05	95.03
810.07	95.04
825.01	93.01
825.03	93.02
825.05	93.03
825.07	93.04
825.09	93.05
825.11	93.06
825.13	93.07
825.15	93.08
825.17	93.09
825.19	93.10
825.21	93.11
825.23	93.12

825.25	93.13
830.01	34.05
900.01	30.01
902.01	150.060
902.03	150.061
902.05	150.062
902.07	150.063
902.09	150.064
902.11	150.065
902.13	150.066
902.15	150.067
902.17	150.068
902.19	150.069
902.21	150.070
902.23	150.071
902.25	150.072
902.27	150.073
905.01	90.01
905.5	90.03
905.07	90.04
905.11	90.06
905.19	90.10
917.01	91.01
917.03	91.02
917.05	91.03
917.07	91.04
917.09	91.05
917.13	91.07
917.15	91.10
917.17	91.11
917.19	91.12
925.01	131.01
925.05	131.02
925.07	131.03
925.09	131.04
925.11	131.05
925.13	131.06

925.15	131.07
930.01	130.03
955.01	34.15
955.03	34.16
955.05	34.17
955.07	34.18
955.09	34.19
1000.01	32.01
1000.03	32.02
1000.05	32.03
1003	30.05
1005.01	110.01
1005.03	110.02
1005.05	110.03
1005.09	110.05
1005.11	110.06
1005.13	110.07
1005.15	110.08
1005.17	110.09
1005.19	110.10
1005.23	110.11
1005.25	110.12
1015.01	32.15
1015.03	32.16
1015.05	32.17
1015.07	32.18
1015.12	32.19
1015.13	32.20
1017.01	32.35
1017.03	32.36
1017.05	32.37
1017.07	32.38
1017.09	32.39
1017.11	32.40
1017.13	32.41
1017.15	32.42
1017.17	32.43
1017.19	32.44

1017.21	32.45
1017.23	32.46
1017.25	32.47
1020.01	34.03
1020.03	34.03
1020.05	34.03
1022.01	152.01
1022.03	152.02
1022.05	152.03
1022.07	152.04
1022.09	152.05
1022.11	152.06
1022.13	152.07
1100.02	111.30
1100.05	111.31
1100.09	111.32
1110.01	111.06
1110.03	111.06
1110.05	111.06
1110.07	111.06
1110.09	111.06
1110.11	111.06
1115	111.04
1125.05	111.10
1125.07	111.11
1125.17	111.12
1190.01	113.01
1190.03	113.02
1190.07	113.04
1190.09	113.05
1190.11	113.06
1190.13	113.07
1190.15	113.08
1200.01	112.01
1200.03	112.02, 112.03
1200.04	112.21
1200.05	112.04

1200.07	112.05
1200.09	112.06
1200.11	112.07
1210.01	112.20
1210.03	112.21
1210.05	112.22
1210.07	112.23
1210.11	112.24
1300	70.01
1305.01	71.01
1305.03	71.02
1305.05	71.03
1305.07	71.04
1305.09	71.05
1310.01	Ch. 74, Sch. I
1310.02	72.02
1310.03	72.03
1310.05	72.04
1310.09	72.06
1310.11	72.07
1310.13	72.08
1310.15	72.09
1310.17	72.10
1315.01	33.02
2000.01	130.01
2000.03	130.02
2005.02	133.01
2005.03	133.02
2005.05	133.03
2005.07	133.04
2005.15	133.05
2005.23	133.06
2005.24	133.07
2015	130.04
2020.03	132.01, 132.02
2020.05	132.03
2020.07	132.04

2020.09	132.05
2020.11	132.06
2020.13	132.07
2020.15	132.08
2020.17	132.09
2020.19	132.10
2020.21	132.11

REFERENCES TO ORDINANCES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
-	10-11-1963	31.02, 153.001-153.011, 153.026, 153.028-153.033, 153.050-153.053, 153.065-153.068, 153.080-153.083, 153.095-153.098, 153.110-153.113, 153.125-153.128, 153.140, 153.141, 153.143, 153.144, 153.155-153.159, 153.170, 153.171, 153.173, 153.174, 153.185-153.187, 153.190, 153.191, 153.205-153.209, 153.220, 153.221, 153.223, 153.224, 153.236-153.238, 153.250, 153.252, 153.253, 153.265-153.268, 153.280-153.283, 153.295-153.297, 153.310, 153.311, 153.325-153.332, 153.345-153.351, 153.365, 153.380-153.382, 153.395-153.397, 153.410-153.416, 153.430-153.438, 153.455, 153.457-153.459, 153.470, 153.471, 153.473-153.480, 153.456
98-09	- -	153.004
98-16	- -	153.351
98-19	- -	153.004, 153.190

99-03	--	153.065, 153.080, 153.095, 153.126, 153.140, 153.156, 153.157, 153.170, 153.190, 153.206
99-19	--	153.186, 153.190
00-06	--	153.031
00-10	--	153.190, 153.206
00-20	--	153.004
01-06	--	153.031
01-08	--	153.348, 153.349
01-10	--	153.140, 153.435
01-14	--	153.006
01-15	--	153.029
02-09	--	30.04
02-11	--	153.004, 153.171
02-21	--	153.004
03-02	--	153.004
03-04	--	153.004, 153.051
03-06	--	72.02
03-07	--	150.001-150.005
03-15	--	90.04
04-10	--	30.04
04-12	--	153.031
04-13	--	153.031
04-14	--	153.028
04-15	--	153.004, 153.052, 153.205
04-16	--	153.395
05-01	--	153.004
05-03	--	153.156, 153.171
05-04	--	153.031
05-05	--	153.031, 153.158, 153.190, 153.381
05-06	--	34.16, 153.348
06-06	--	133.06
06-08	--	153.156
06-11	--	153.028
06-13	--	153.031
06-15	--	Ch. 74, Sch. I

06-16	--	150.036, 150.046
07-01	--	110.02, 111.03
07-04	--	150.036
07-07	--	153.031
07-08	--	153.004, 153.011, 153.140, 153.155, 153.157
07-09	--	153.004, 153.266
07-19	--	110.02
07-21	--	150.001
07-26	--	112.06
07-27	--	153.348
07-29	--	153.381
08-02	--	153.156
08-03	--	93.05
08-09	--	153.050, 153.051, 153.126, 153.140
08-12	--	150.105
08-14	--	153.031
08-17	--	153.004, 153.050
08-18	--	153.004, 153.235
08-19	--	153.381
08-25	--	150.036, 150.038
08-26	--	150.038
09-01	--	90.03, 90.04
09-02	--	153.051, 153.380
09-04	--	153.206, 153.380
09-06	--	34.15
09-07	--	133.07
09-13	--	153.397
09-15	--	153.004
09-18	--	153.083
09-19	--	153.053, 153.068, 153.098, 153.113, 153.128, 153.380
10-01	--	153.435
10-03	--	90.04, 90.10
10-04	--	153.156
10-05	--	110.02
10-06	--	112.20-112.24

10-08	--	153.347, 153.348
10-09	--	153.438
10-10	--	151.01-151.09
10-11	--	32.17, 32.19
10-15	--	32.35-32.47
10-17	--	92.04
10-18	--	113.01-113.08
10-19	--	30.05, 110.02
10-22	--	30.04
11-04	--	91.01-91.05, 91.07, 91.10-91.12
11-08	--	153.004, 153.236
11-09	--	153.382
11-10	--	153.051
11-12	--	150.037, 150.044
11-13	--	153.238, 153.253
11-14	--	110.02, 111.05, 111.30-111.32, 131.01-131.07, 150.003, 150.106, 150.109
11-16	--	153.205
11-44	--	110.11
12-02	--	153.220, 153.221, 153.223, 153.224
12-04	--	153.011, 153.032, 153.436
12-06	--	112.21
12-07	--	30.05, 110.02
12-08	--	111.30
12-10	--	92.10
12-13	--	111.03, 133.01
12-16	--	30.04
12-27	--	153.004, 153.236
12-29	--	110.02, 111.12
12-30	--	153.028, 153.031, 153.032
13-01	4-8-2013	34.04
13-02	5-28-2013	33.01
13-03	6-10-2013	153.381
13-04	9-9-2013	90.04
13-05	10-14-2013	153.011
14-01	1-27-2014	112.21

14-01A	1-13-2014	150.110
14-02	3-24-2014	T.S.O. IV
14-03	8-11-2014	91.13
14-04	8-11-2014	153.004, 153.380
14-05	9-8-2014	153.004, 153.051, 153.171
14-10	11-24-2014	T.S.O. IV
15-	- -2015	153.206
15-01	4-27-2015	153.004, 153.251
15-02	6-8-2015	112.06
15-03	6-8-2015	112.03
15-04	6-8-2015	113.03
15-05	6-8-2015	T.S.O. IV
15-07	8-24-2015	T.S.O. I
15-08	9-14-2015	150.020-150.023
15-09	9-14-2015	150.035-150.046
15-10	10-12-2015	T.S.O. IV
15-11	11-9-2015	112.01-112.08
15-13	12-15-2015	153.436
15-14	12-15-2015	153.206
15-16	12-15-2015	T.S.O. I
16-02	2-22-2016	153.004
16-03	3-14-2016	T.S.O. IV
16-04	2-23-2016	T.S.O. II
16-05	5-23-2016	92.02
16-06	6-13-2016	50.08
16-07	6-13-2016	153.029
16-08	6-27-2016	72.05
16-09	8-8-2016	72.05
16-10	8-22-2016	150.125
16-11	8-22-2016	T.S.O. III
16-12	11-14-2016	153.004, 153.050-153.053, 153.065-153.068, 153.080- 153.083, 153.095-153.098, 153.110-153.114, 153.125- 153.129, 153.145, 153.160, 153.175, 153.192, 153.206, 153.210, 153.225, 153.239, 153.254
16-13	12-12-2016	97.01-97.04

16-14	12-12-2016	T.S.O. IV